TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 103.

THE BOARD OF EDUCATION OF THE KENTUCKY ANNUAL CONFERENCE OF THE METHODIST EPISCOPAL CHURCH, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED AUGUST 21, 1905.

(19,880.)

(19,880.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 378.

THE BOARD OF EDUCATION OF THE KENTUCKY ANNUAL CONFERENCE OF THE METHODIST EPISCOPAL CHURCH, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 5, 1905.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said supreme court of the State of Illinois, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between The Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church plaintiff in error and The People of the State of Illinois defendant in error wherein was drawn in question the validity of a statute of Illinois on the ground of its being repugnant to the Constitution, treaty, or laws of the United States and the decision was in favor of the validity of the authority as exercised; a manifest error has happened to the great damage of the said The Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, plaintiff in error, as by its complaint appears.

We being willing that error, if any hath been, should be duly correct*ly*, and full and speedy justice done to the parties aforesaid in this behalf do command you, if judgment be therein given that then under your seal, distinctly and openly you send the
2 record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 30th day of August next in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 31st day of July, A. D. 1905.

[Seal Circuit Court U. S., Northern District Illinois, 1855.]

MARSHALL E. SAMPSELL.

Filed Aug. 2, 1905.

CHRISTOPHER MAMER, Clerk.

3 In the Supreme Court of Illinois.

In the Matter of the Estate of FANNY Speed, Deceased; Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church *v.* PEOPLE STATE OF ILLINOIS.	No. 4148. Appeal County Court, Cook.

I, Christopher Mamer, clerk of the supreme court of Illinois, do hereby certify, that on the second day of August, A. D. 1905, a copy

of the foregoing writ of error for defendant in error was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said court, this fifteenth day of August, A. D. 1905.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of the Supreme Court.

4 UNITED STATES OF AMERICA, *ss:*

To the People of the State of Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois wherein In the matter of the estate of Fannie Speed, deceased, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable James H. Cartwright chief justice of the supreme court of the State of Illinois, this 28th day of July [SEAL.] in the year of our Lord one thousand nine hundred and five.

JAMES H. CARTWRIGHT,
Chief Justice of the Supreme Court of the State of Illinois.

I have received a copy of the foregoing this 11th day of August, 1905.

MERRITT W. PINCKNEY,
Inheritance Tax Attorney for Cook County, Illinois.

Filed Aug. 12, 1905.

CHRISTOPHER MAMER, Clerk.

5 In the Supreme Court of Illinois.

In the Matter of the Estate of FANNY Speed, Deceased; Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church *v.* PEOPLE STATE OF ILLINOIS.	No. 4148. Appeal County Court, Cook.

I, Christopher Mamer, clerk of the supreme court of Illinois, do hereby certify that on the twelfth day of August, in the year of our

Lord one thousand nine hundred and five, a copy of the foregoing citation was lodged in my office, at Springfield, Illinois.

Witness, my hand and the seal of said court, this fifteenth day of August, A. D. 1905.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of the Supreme Court.

6 In the Supreme Court of Illinois.

In the Matter of the Estate of FANNY Speed, Deceased; Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church *v.* PEOPLE STATE OF ILLINOIS.	No. 4148. Appeal County Court, Cook.

I, Christopher Mamer, clerk of the supreme court of Illinois, and keeper of the records and files thereof, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages numbered from one to sixty-five both inclusive, contain a true, perfect and complete copy of the record and proceedings had in the above entitled cause in said court, including a certified copy of the opinion of the court, and that pages sixty-six to sixty-eight inclusive, contain a true and correct copy of the assignment of errors upon said record filed in said court on the second day of August, A. D. 1905, the original of which remain on file and of record in my said office.

In testimony whereof, I have hereunto set my hand and caused the seal of the said supreme court of Illinois to be hereunto affixed, at Springfield, Illinois, this fifteenth day of August, in the year of our Lord one thousand nine hundred and five.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of the Supreme Court.

7 UNITED STATES OF AMERICA:

In the Supreme Court of the State of Illinois.

In the Matter of the Estate of FANNY Speed, Deceased; Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church *v.* PEOPLE STATE OF ILLINOIS.	No. 4148. Appeal County Court, Cook.

Be it remembered, to-wit: on the third day of April, A. D. 1905, there was filed in the office of the clerk of the supreme court of the

State of Illinois, a certain transcript of record, which is in words and figures following, to-wit:

8 UNITED STATES OF AMERICA:

STATE OF ILLINOIS, } ss.:
County of Cook, }

Pleas before the Honorable Orrin N. Carter, sole presiding judge of the county court of Cook county, in the State of Illinois, at a regular term of said county court of Cook county begun and holden at the court house, in the city of Chicago, in said county and State, on the second Monday, being the 13th day, of February, in the year of our Lord one thousand nine hundred and five, and of the Independence of the United States of America the one hundred and twenty ninth.

Present: The Honorable Orrin N. Carter, judge of the county court of Cook county. Thomas E. Barrett, sheriff of Cook county.

Attest: PETER B. OLSEN, Clerk.

Be it remembered that heretofore, to-wit; on the seventeenth day of February in the year of our Lord one thousand nine hundred and five the same being one of the days of the February term of the county court of Cook county, the following petition was filed with the clerk of said court in words and figures, to-wit;

STATE OF ILLINOIS, } ss.:
County of Cook, }

In the County Court of Cook County.

Filed Apr. 3, 1905.

C. MAMER,
Clerk of Supreme Court.

22204.

9 In the Matter of the Estate of FANNY SPEED, Deceased.
Inheritance Tax.

To the Honorable Orrin N. Carter, judge of the county court of Cook county, State of Illinois:

Now comes the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church a corporation, organized and existing in and by virtue of the laws of the State of Kentucky, and prays an appeal to the county court of Cook county, State of Illinois, from the order entered by the Honorable Orrin N. Carter, county judge in and for said county on the thirtieth day of Janu-

ary, A. D. 1905 imposing an inheritance tax of six thousand two hundred eighty and fifty one hundredths dollars against the said Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church. Said appellant assigns the following reasons for this appeal, to-wit:

First. That this respondent is by reason of its organization and the purposes of said organization, as shown by the record in this case, exempt from such tax under the act of May 10 1901 amending an act entitled "An act to tax gifts legacies and inheritances in certain cases, and to provide for the collection of the same," approved June 15, 1895.

Second. For that the imposition of such a tax upon this respondent when corporations organized for like purposes under the laws of the State of Illinois are exempt therefrom, is in conflict with article IX section 1 of the constitution of the State of Illinois.

10 Third. That the imposition of a tax upon this respondent while corporations organized for like purposes under the laws of the State of Illinois are exempt renders said act void as to this respondent as in conflict with the XIV amendment to the Constitution of the United States in that it abridges the privileges and immunities of the respondent, who is a citizen of the United States and denies to this respondent the equal protection of the laws.

Wherefore this respondent does except to the said order and appeals therefrom to the judgment of the county court of Cook county, State of Illinois.

BOARD OF EDUCATION OF THE KENTUCKY ANNUAL CONFERENCE OF THE METHODIST EPISCOPAL CHURCH.
By ALDRICH & McAULEY,
Solicitors for said Respondents.

CHARLES H. ALDRICH, Of Counsel.

Appeal allowed in accordance with the prayer of this petition on this 16th day of February A. D. 1905.

ORRIN N. CARTER,
County Judge.

And afterwards, to-wit: on the 17th day of February A. D. 1905 there was filed with the clerk of said court a certain bond in words and figures as follows to-wit:

11 Know all men by these presents, that we Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church a corporation, and the United States Fidelity and Guaranty Company of Baltimore a corporation are held and firmly bound unto the People of the State of Illinois, in the penal sum of ten thousand dollars lawful money of the United States for the pay-

ment of which, well and truly to be made, we bind ourselves, our successors and assigns, jointly severally, and firmly by these presents.

Witness our hands and seals this third day of February A. D. 1905.

The condition of the above obligation is such, that whereas on the thirtieth day of January A. D. 1905, an order was entered by the Honorable Orrin N. Carter county judge in and for the county of Cook, State of Illinois, imposing an inheritance tax against the above bounden Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church in the sum of six thousand two hundred eighty and fifty one hundredths dollars, from which order of the said Honorable Orrin N. Carter, county judge in and for the said county of Cook, State of Illinois, the said Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church has prayed for and obtained an appeal to the county court of Cook county State of Illinois.

Now therefore, if the said Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church shall duly prosecute its said appeal with effect and moreover pay the amount of the said tax costs and interest to be rendered against it in
12 case the said judgement shall be affirmed in the county court, then the above obligation to be void otherwise to remain in full force and virtue.

BOARD OF EDUCATION OF THE KENTUCKY ANNUAL CONFERENCE OF THE METHODIST EPISCOPAL CHURCH.
CHARLES F. ALDRICH, Attorney.
THE UNITED STATES FIDELITY AND GUARANTY COMPANY,
[SEAL.] By GEORGE D. WEBB, Attorney in Fact.

Approved this 16th day of February A. D. 1905
ORRIN N. CARTER,
County Judge.

And afterwards, to-wit: on the 1st day of March A. D. 1905 the following among other proceedings were had by and before said court and entered or record to-wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court of Cook County.

In the Matter of Estate of FANNY SPEED, Deceased.

13 This cause, now coming on to be heard upon the appeal of the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, a corporation, from the order and

decision of the Honorable Orrin N. Carter, county judge, heretofore made fixing the amount of the tax in said estate under and pursuant to the statutes of this State, relating to the taxation of gifts, legacies, and inheritances.

And the court, having heard the proofs in said cause, the arguments of counsel, and being fully advised in the premises, doth find that the said decedent, Fanny Speed, died on the 10th day of August A. D. 1902, seized of property in the State of Illinois, subject to taxation, pursuant to said statutes, and that all parties in interest have — duly notified of this proceeding.

It is therefore ordered and decreed that the cash value of the several estates, annuities, life estates or terms of years, growing out of the said estate of Fanny Speed, deceased, subject to taxation under said statutes, and the tax to which the same are severally liable be, and the same are hereby assessed and fixed as follows:

Beneficiary, Relationship, and Description of Property.

	Appraised value.	Exemptions.	Cash value of estate.	Tax.
James W. Henning, nephew, an undivided ⅓ of entire estate	$26168.75	$2000.00	$24168.75	$483.37
Samuel C. Henning nephew, an undivided ⅓ of entire estate	$26168.75	$2000.00	$24168.75	$483.37
14 Lulie Henning niece, an undivided ⅓ of entire estate	$26168.75	$2000.00	$24168.75	$483.47
Byron Hilliard, grand nephew, an undivided 1/32 of entire estate	$6542.19	$2000.00	$4542.19	$90 84
Minnie Hilliard, grand niece, an undivided 1/32 of entire estate	$6542.19	$2000.00	$4542.19	$90.84
Isaac Hilliard grand nephew, an undivided 1/32 of entire estate	$6542.19	$2000.00	$4542.19	$90.84
Edward Hilliard, grand nephew, an undivided 1/32 of entire estate	$6542.19	$2000.00	$4542.19	$90.84
Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, a corporation organized under the laws of the State of Kentucky, an undivided ½ of entire estate	$104675	None	$104675.	$6280.50

The court further finds that the real property upon which the foregoing assessment of tax is based is situated in the city of Chicago, county of Cook, and State of Illinois, and is known and described as follows, to-wit:

An undivided ½ of that part of lot five (5) in block fifty-eight (58) in the original town of Chicago, bounded and described as follows:

15 Beginning at a point in the west line of said lot five (5) in the east line of Dearborn street, twenty-three (23) feet and eight (8) inches south of the north-west corner of said lot — (5), running thence south on the west line of said lot five (5), seventy-—(76) feet and — (6) inches more or less to a point sixty three (63) feet north of the north line of Madison street, as now established, running thence east paralled with the north line of Madison street eighty (80) feet more or less to the east line of said lot five (5), running thence north along the said east line seventy-six (76) feet and six (6) inches more or less to a point due east of the place of beginning, running thence west eighty (80) feet more or less to the place of beginning, said premises being also known as lots twelve (12) and thirteen (13) in the assessor's division of lots one (1) to five (5) inclusive, in block fifty-eight (58) aforesaid, and also known as numbers 121, 123, 125 and 127 Dearborn street.

That the tax assessed as aforesaid against the said James W. Henning, Samuel C. Henning, Lulie Henning, Byron Hilliard, Minnie Hilliard, Isaac Hilliard and Edward Hilliard, respectively, has been paid in full and satisfied in open court, and that the lien of the unpaid portion of said tax, as provided by statute should be released and discharged as to that part of said real estate above described taken and received by the said James W. Henning Samuel C. Henning, Lulie Henning, Byron Hilliard, Minnie Hilliard, Isaac Hilliard and Edward Hilliard, under and by virtue of the last will and testament of said decedent.

16 It is therefore further ordered that the lien of said unpaid portion of said tax be discharged and released as to the undivided portion of said real estate taken and received by the said James W. Henning, Samuel C. Hinning, Lulie Henning, Byron Hilliard, Minnie Hilliard, Isaac Hilliard and Edward Hilliard, and that the lien of said unpaid portion of said tax be restricted to that portion of said real estate taken and received by the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, said unpaid portion of said tax being the tax assessed against the said Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church as aforesaid.

It is further ordered that this order be spread upon the inheritance tax records of Cook county, Illinois. And thereupon the said Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church prayed an appeal from the order and decree of the court herein to the supreme court of the State of Illinois, which was allowed upon said appellant filing a bond in the sum of ten thousand dollars ($10,000.) with good and sufficient surety within thirty (30) days from this date, and a certificate of evidence likewise within thirty (30) days from date.

Enter

ORRIN N. CARTER,
County Judge.

And afterwards, to-wit: on the 3rd day of March A. D. 1905, there was filed with the clerk of said court a certain stipulation in words and figures as follows to-wit:

17 STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court of Cook County.

In the Matter of the Estate of FANNY SPEED, Deceased. Gen. No. 22204, Docket No. 1398.

It is hereby stipulated between the parties to the above entitled cause that the original certificate of evidence and bill of exceptions may be incorporated into the transcript of the record to be prepared by the clerk of the county court on appeal to the supreme court of Illinois.

E. M. ASHCRAFT,
Inheritance Tax Attorney.
ALDRICH AND MCAULEY,
Attorneys for Board of Education of Kentucky Annual Conference of Methodist Church.

And afterwards, to-wit; on the 3rd day of March A. D. 1905 there was filed with the clerk of said court a certain bill of exceptions in words and figures to-wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

18 In the County Court of Cook County.

In the Matter of the Estate of FANNY SPEED, Deceased. No. 22204.

Certificate of Evidence.

Be it remembered and certified that on the hearing of this cause, at this term, upon the appeal of the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church from the order of the county judge of said Cook county, Illinois, in said matter, finding that the said corporation was liable to pay an inheritance amounting to the sum of six thousand two hundred eighty and fifty one-hundredths dollars ($6,280.50), by reason of the devise to it by said Fanny Speed, deceased, of a one-half interest in certain real-estate in Cook county, Illinois, to-wit; devised by the last will and testament of said Fannie Speed, deceased, which order of said county judge affirmed the action of the appraiser appointed to appraise the value of the property of said decedent, pursuant to the statute of Illinois in such case made and provided, there was offered in evidence in behalf of the State of Illinois the report of Augustus G. Anderson, the appraiser duly appointed to appraise said property, which report was in the words and figures following, to-wit:

"Appraiser's Report.

19 STATE OF ILLINOIS, } ss:
Cook County, }

In the County Court of Cook County.

In the Matter of the Estate of FANNY SPEED, Deceased. Inheritance Tax. Docket No. 1398.

To the Honorable Orrin N. Carter, county judge:

I, the undersigned, who was on the 23rd day of June, 1904 appointed appraiser under and pursuant to the statutes of the State of Illinois relating to the taxation of gifts, legacies and inheritances in certain cases, approved June 15, 1895, in force July 1, 1895, to fix the fair market value of the property of the estate of said Fanny Speed, deceased, subject to taxation under said act, respectfully report as follows;

First. Forthwith after said appointment, I gave notice by mail to all persons known to have or claim an interest in the property of said decedent subject to assessment, and to such persons as the county judge by order directed, of the time and place at which I would appraise said property.

Service of said notice is evidenced by an affidavit marked Exhibit "A" hereto attached and made a part hereof.

Second. At the time and place in said notice stated, to-wit; at 164 La Salle street, rooms 87 & 88, in the city of Chicago, Illinois, at the hour of 10 a. m. on the 28th day of July, 1904, and thereafter from time to time, pursuant to adjournments regularly had, I proceeded to appraise all such property of the estate of said deceased
20 subject to taxation under said act, and to take evidence in writing under oath of the several witnesses produced concerning said property and the fair market value thereof at the time of the death of said decedent, which depositions so far as the same were taken are hereto attached and made a part of this report, together with certain documentary evidence produced marked Exhibit "B."

And from said appraisement and evidence I find that the said decedent Fanny Speed died seized of property subject to said inheritance tax and that the fair market value of such property of said estate at the time of said decedent's death, and of the several estates, legacies and interests growing out of said estate and passing by reason of the death of said decedent, and the persons entitled therein as heirs, legatees, devisees, etc., to be as follows:

SCHEDULE 1.

Estate of FANNY SPEED, Deceased.

Date of decedent's death August 10th 1902.
Residence of decedent, Louisville, State of Kentucky.
Property transferred by will.
Names, titles and addressed of legal representatives, etc.
John B. Knight administrator of said estate appointed by the probate court of Cook county.
That said decedent left her surviving no child or children or descendents of any deceased child or children and no father or mother sisters or brothers but left her surviving James W. Henning,
21 Samuel C. Henning and Lulie Henning, children of James W. Henning a deceased brother of said decedent and Byron Hilliard, Minnie Hilliard, Isaac Hilliard and Edward Hilliard, children of Marie Hilliard a deceased daughter of said James W. Henning, the deceased brother of said decedent her only heirs at law and next of kin.
Devisees and legatees under the last will and testament of said decedent James W. Henning a nephew, Samuel C. Henning, a nephew, Lulie Henning, a niece, Byron Hilliard a grand nephew, Minnie Hilliard, a grand niece, Isaac Hilliard, a grand nephew, Edward Hilliard, a grand nephew, and the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, a corporation organized and doing business in the State of Kentucky.
Names of persons appearing at appraisement in behalf of estate: John B. Knight, Esq. administrator of said estate, William B. McIlvaine of the firm of Wilson, Moore & McIlvaine for said estate and the heirs at law of said decedent and Charles H. Aldrich attorney for the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church.

SCHEDULE II.

Inventory of Decedent's Estate.

Personal property.	Items.	Fair market value.
Personal property		None.
	Deductions.	
22 Probate court costs		$300.00
Attorneys' fees		250.00
Administrators' fee		100.00
Total deductions		$650.00

Real property.	Items.	Fair market value.
An undivided one half (½) of that part of lot five (5) in block fifty eight (58) in the original town of Chicago bounded and described as follows: Beginning at a point in the west line of said lot five (5) in the east line of Dearborn street twenty-three (23) feet and eight (8) inches south of the northwest corner of said lot five (5) running thence south on the west line of said lot five (5) seventy six (76) feet and six (6) inches more or less to a point sixty three (63) feet north of the north line of Madison street as now established; running thence east parallel with the north line of Madison street eighty (80) feet more or less to the east line of said lot five (5); running thence north along said east line seventy six (76) feet and six (6) inches more or less to a point due east of the place of beginning; running thence west eighty (80) feet more or less to the place of beginning, said premises being also known as lots twelve (12) and thirteen (13) in the Assessors' division of lots one (1) to five (5) inclusive in block fifty eight (58) aforesaid situate in the city of Chicago county of Cook and State of Illinois		$210,000.00
Total fair clear market value of realty		$210,000.00

23 Summary.

Total personal property		None.	
Deductions—Debts not secured on real estate		None.	
Court costs	$300.00		
Executor's or administrator's fees	100.00		
Attorney's fees	250.00		
Total costs of administration	$650.00		
Total deductions from personal property		$650.00	
Net personal property		None.	
Total real estate		$210,000.00	
Incumbrances on real estate	None.		
Excess of debts over value of personalty	$650.00		
Total deductions from real estate		650.00	
Net value of real estate			$209,350.00
Clear fair market value of decedent's estate			$209,350.00

SCHEDULE III.

Taxable Estates and Interests Growing Out of the Estate of Fanny Speed, Deceased.

24

Estates, beneficiaries, relationship, and description of property.	Appraised fair market value.	Statutory exemption.	Rate.	Taxable cash value.
A certain devise to James W. Henning, a nephew of said decedent under her last will and testament. A one eighth part of all the real and personal property of which said decedent died seized and possessed located and being in the State of Illinois. Personal estate none. His interest in the real estate of said decedent situate and being in the State of Illinois..... ...	$26,168.75.	$2000.00	2 %	$24,168.75
A certain devise to Samuel C. Henning a nephew of said decedent under her last will and testament. A one eighth part of all the real and personal property of which said decedent died seized and possessed located and being in the State of Illinois. Personal estate none. His interest in the real estate of said decedent situate and being in the State of Illinois..... ..	$26,168.75	$2000.00	2 %	24,168.75
A certain devise to Lulie Henning a niece of said decedent under her last will and testament. A one eighth part of all the real and personal property of which said decedent died seized and possessed located and being in the State of Illinois. Personal estate none. Her interest in the real estate of said decedent situate and being in the State of Illinois.....	$26,168.75	$2000.00	2 %	$24,168.75
A certain devise to Byron Hilliard a grand nephew of said decedent under her last will and testament. A one thirty-second part of all the real and personal property of which said decedent died seized and possessed located and being in the State of Illinois. Personal estate none. His interest in the real estate of said decedent, situate and being in the State of Illinois	$6,542.19	$2000.00	2 %	$4,542.19

A certain devise to Minnie Hilliard a grand niece of said decedent under her last will and testament.				
A one thirty-second part of all the real and personal property of which said decedent died seized and possessed, located and being in the State of Illinois.				
Personal estate none.				
Her interest in the real estate of said decedent situate and being in the State of Illinois.....	$6,542.19	$2000.00	2 %	$4,542.19
26 A certain devise to Isaac Hilliard a grand nephew of said decedent under her last will and testament.				
A one thirty-second part of all the real and personal property of which said decedent died seized and possessed, located and being in the State of Illinois.				
Personal estate none.				
His interest in the real estate of said decedent situate and being in the State of Illinois.....	$6,542.19	$2000.00	2 %	$4,542.19
A certain devise to Edward Hilliard a grand nephew of said decedent under her last will and testament.				
A one thirty-second part of all the real and personal property of which said decedent died seized and possessed located and being in the State of Illinois.				
Personal estate none.				
His interest in the real estate of said decedent situate and being in the State of Illinois.....	$6,542.19	$2000.00	2 %	$4,542.19
A certain devise under the last will and testament of said decedent to the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church a corporation organized under the laws of the State of Kentucky and engaged exclusively in educational and religious work in said State, but it does not have or maintain an office in the State of Illinois				
27 or is engaged in any educational or religious work therein.				
A one half part of all the real and personal property of which said decedent died seized and possessed located and being in the State of Illinois.				
Personal estate none.				
Its interest in the real estate of said decedent situate and being in the State of Illinois.....	$104,675.00	None	6 %	$104,675.00

The foregoing including the several schedules herein, together with Exhibits "A" and "B" hereto attached, constitute a full and correct report of said appraisement as made by me pursuant to said order of appraisement.

Respectfully submitted this 8th day of August, A. D. 1904.

AUGUSTUS G. ANDERSON, Appraiser."

There was likewise offered in evidence the last will and testament of said Fanny Speed deceased, which will and testament was in the words and figures following:

"LOUISVILLE, Jan. 5, 1897.

JEFFERSON Co., }
State of Ky. }

Fanny Speed of sound mind without influence of any person make this my will.

28 First, ten thousand dollars $10,000.00—for a new church when the trustees of Trinity M. E. church on Guthery and Third street build a new church.

Six thousand $6000—for a parsonage—and for the six thousand I want the trustee to give the house now used as a parsonage, on *six street 925* number for a deaconess' home.

I give one thousand $1000—dollars to the Preacher's Aid Society of the E-Methodist Ky. Conference.

Church Extension Society of M. E. Church $1000—one thousand dollars. To the Womans Foreign Missionary of same church one thousand dollars $1000. To the Womens Home Missionary Society one thousand dollars—Haven Home in Savannah *Ge* property of the Womans Home Missionary Society one thousand dollars—$1000—To Fanny Speed Riely daughter of Riely now of Baltimore—named for me while he was pastor of Trinity church Louisville, five hundred dollars—$500.

The house and lot on Eddy street now occupied by Julia Green I give to her not subject to her husband Wilton Green debts and to be a home for Mary Taylor, her aunt.

To the colored orphan asylum, five hundred dollars.

I now dispose of the pictures—to Minny Hilliard Fanny's picture over the mantle piece in the parlor at the county home as I intended it for her mother Marie Hilliard Mr. Lincoln to Joshua F. Speed son of Smith and Susan Speed The picture of Mrs Speed and Mr. Speed, Joshua, my husband father and mother to Martha Adams the only one of the family left, she to give to any one she wants to have them at her death. The picture with Mr. Lincoln writing to

Richard T. Stevenson, son of Dr. D. Stevenson as I promised

29 that picture to Dr. Stevenson who has been called away from this earth to his home in heaven Jan. 2, 1897—Barbourville, Ky. The picture of my sister Mrs. Hobbs to Lulie Henning.

The silver, all the pieces marked legacy from our uncle, Mr. Williamson, the teaspoons marked Henning, the desert spoons, marked

H.—the two goblets I give to J. W. Henning—the silver butter dish also—that silver pitcher and waiter given to Mr. Speed by the friends after the war, to Sam Henning—The silver to set to Minnie Hilliard—The cut glass pitchers to Lulie Henning. My dining furniture, library furniture to Fanny Forester, wife of D. Forester. The writing desk in the library to Fanny—the daughter. The old pianoforte to Fanny if she wants it—if not sell it and keep what you can get for it.

Sam Henning has given me so many books I want him to have them also Froud *Ceasor* and his History of England.

I want Joshua F. Speed, son of Smith Speed to have Shakespeare work.

I give to the college under the control of the Board of Education of the Methodist *Episcopal* Church of Ky. Conference *Britanica* Foster Encyclopedia Motley's Dutch Republic—in all of Chataqua course—the rest of my books to Minnie Hilliard.

I give to Jesse Fry colored five hundred dollars after my debts, funeral expenses, all legacies mentioned.

The rest of my estate divided between my relations J. W. Henning, Sam Henning, Lulie Henning, children of my brother James Henning—the children of Marie Hilliard, grandchildren of my brother—James Henning the names Byron, Minnie, Isaac,
30 Edward Hillard.

I want them to have the same that each one of my brother's children will get—now I want no mistake made—they must have the portion that would be their mother's with 5000 five thousand more to them. The other half of my estate given to the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church to form a part of the educational fund of said conference to be held, invested and administered for educational purposes by said board as other properties forming a part of said fund are held, invested and administered, this is the way I want what I leave given just as I have written.

Written by my own hand Jan. 5, 1897.

(Signed) FANNY SPEED.

MEMORANDUM. The treat pin I wear has my name some of our darling baby Fosdick Bodley hair given to Edith Bodley—My watch and chain with Fanny Henning name given to Minny Hilliard—The pitcher miniature of my sister Susan Hobbs given to Susan Henning Sherley The clock in the dining room to Fanny Forester. I leave my estate in the hands of my two nephews J. W. Henning & Sam Henning requiring no security believing they will carry out my will.

FANNY SPEED.

Dec. 22, 1897.

COUNTRY HOME, May 16, 1898.

In my will I directed that the parsonage owned now by Trinity Methodist Episcopal on Six street, Louisville, Ky., should
31 be given as a deaconess home—but since the German church has established a home on Eighth street I desire or rather say that I change my will with regard to that home.

I want five hundred dollars given to the infant son of Mr. George Post, named for me, Speed, as his mother Cora Post has lived with me and I regard her as my friend.

Written in my own handwriting at home in the country no one being with me.

(Signed) FANNY SPEED.

The book case and desk belonging to be given to Gilmer Adams, the picture of Mr. Speed and myself painted by Healy, now in our parlor at home to be given to Sam Henning, my nephew.

Written in my own handwriting.

FANNY SPEED.

JUNE 29, 1900.

In view of the uncertainty of life I this morning June 29, 1900 write I have promised Trinity Church building on Guthery street to pay for the bells—chimes of that M. E. church, also five thousand dollars toward the debt on the church.

FANNY SPEED.

COUNTRY HOME, Nov. 3, 1900.

I this day add to my will the following things which I write in my own handwriting.

I give to my cousin Lizzie Downey—one thousand dollars.

I want Mr. Sam Henning to have our country place Cold
32 Spring at what valuation it is worth also the book case go with the house, also my old horses, carriages and all the farming wagons—or anything in that line that may be on the place when I leave it.

Fanny Speed's Will.

COUNTRY HOME, Nov. 15.

The picture of Fannie over my *mantle* piece I want given to Lilly Sherral, the violet over the mantle to Mrs. Post. The picture on the wall by my bed to the church parlor also to the same, the picture of the Church St. Marks, over the mantle in the library.

Written by myself.

FANNY SPEED.

The picture with the burnt piece of work to the Rev. R. T. Stevenson *Delaven, Ohio*, State of Kentucky."

And to further sustain the issue upon the part of the estate, there was offered in evidence the inventory of John B. Knight, administrator of the estate of Fanny Speed, deceased, in the probate court of Cook county, in words and figures as follows:

"STATE OF ILLINOIS, } ss.:
County of Cook, }

In the Probate Court of Cook County.

In the Matter of the Estate of FANNY SPEED, Deceased.

33 To the Honorable Charles S. Cutting, judge of said court:

The undersigned, John B. Knight, administrator of the estate of Fanny Speed, deceased, respectfully states to the court that the following is a full, true and perfect inventory of all the estate, real and personal, of the said Fanny Speed, located within the State of Illinois, that has come to the possession, knowledge or control of the undersigned:

Goods and chattels as per appraisement, None.
Personal property, None.

Real Estate.

An undivided one-half (½) of that part of lot five (5) in block fifty-eight (58) in the original town of Chicago, bounded and described as follows: Beginning at a point in the west line of said lot five (5) in the east line of Dearborn street, twenty-three (23) feet and eight (8) inches south of the northwest corner of said lot five (5); running thence south on the west line of said lot five (5) seventy-six (76) feet and six (6) inches more or less to a point sixty-three (63) feet north of the north line of Madison street as now established; running thence east parallel with the north line of Madison street eighty (80) feet more or less to the east line of said lot five; running thence north along said east line seventy-six (76) feet and six (6) inches more or less to a point due east of the place of beginning; running thence west eighty (80) feet more or less to the place of beginning. Said premises being also known as lots twelve (12) and thirteen (13) in the Assessors' division of lots one (1) to five (5) inclusive, in block fifty-eight (58) aforesaid, and being also known as the Henning and Speed property, and as numbers 121, 123, 125 and 127 Dearborn street, situated in the city of Chicago, in the county of Cook and State of Illinois.

Said premises are improved by a four story stone front business block, known as the "Henning and Speed block," and the entire property, of which the deceased owned an undivided one-half,
34 is encumbered by a mortgage of one hundred thousand dollars ($100,000.00) to the New York Life Insurance Company.

The title of deceased was in fee simple, derived under the will of Joshua F. Speed, deceased.

Respectfully submitted,

(Signed) JOHN B. KNIGHT."

WILLIAM B. MCILVAINE, a witness produced on behalf of the estate, testified as follows:

"Fanny Speed died on or about the 10th day of August, 1902 a citizen and resident of the State of Kentucky. At the time of her death she left her surviving as her only heirs at law James W. Henning of the city of New York, Samuel C. Henning and Lulie Henning of Louisville, Ky., who were children of James W. Henning, who was a brother of Fanny Speed and Byron Hilliard, Minnie Hilliard, Isaac Hilliard and Edward Hilliard, who were the children of Marie Hilliard, who was the daughter of James W. Henning, a brother of the decedent; the Hilliards are grand nephews and nieces of the decedent and the Hennings are nephews and nieces, and the parties I have named are the only heirs at law of Fanny Speed at the time of her death. At the time of her death Fanny Speed owned an undivided half interest in the premises known as the Henning and Speed block on Dearborn street, just north of Madison street, described in the inventory which has been offered in evidence.

This property at the time of Fanny Speed's death was sub-
35 ject to an incumbrance of $100,000 to the New York Life Insurance Company, secured by a trust deed or mortgage to the New York York Life Insurance — ; the mortgage covered the entire property of which Mrs. Speed owned one-half. Shortly prior to Fanny Speed's death the building on the premises above described was damaged by fire and a number of personal injury suits were brought against her and the Hennings to recover damages, the claims being filed on the fact that the building was without fire escapes as required by law. These suits we have settled for the sum of 2 for $1250 each and one for $1500, but there is one suit pending in the circuit court of the U. S. for this district in which the plaintiff claims the sum of $5,000 and we have been unable to settle this claim and have received no proposition from the plaintiff looking to a settlement, having refused our proposition of $1,500.

By Mr. ASHCRAFT: Are there any other deductions?

A. Well, there will be the costs we paid in the probate court.

Q. Amounting to about how much?

A. Well, that would depend. I don't remember how much we paid.

Q. On $240000?

A. That would be about $275—one dollar a thousand and twenty or thirty court costs—say about $300 would cover the court costs. And then the administrator's fees would not be allowed—not very much. I think he would be entitled to get something. I do
36 not know what the court would allow him where there is no personal property to be administered. He certainly should be allowed $100. and attorney's fees $250.

By the APPRAISER: Do you know anything about the sale of this property?

Mr. ASHCRAFT: What about the value of the property?

A. At the time of Mrs. Speed's death the whole property was considered to be worth on the market about $430000. About some time in January, to the best of my recollection a contract of sale was made between the Hennings and Charles Netcher, by which Mr. Netcher agreed to pay $480000 for the property. This price was considered by the sellers to be more than the property was worth on the market. But Mr. Netcher was engaged in buying the entire corner through from State street to Dearborn street and after considerable negotiation he agreed to pay the price named. The entire property has been assessed for taxation by the board of assessors and board of review of Cook county at the value of $380,060.00 (full value) $76,012. assessed value. The above is the assessment for the current year.

Q. Do you know of any property of the decedent in this State having been disposed of by her prior to her death?

A. I do not. To the best of my information and belief, Mrs. Speed owned no other property in the State of Illinois than the property described in the inventory.

Q. Is it your understanding that the property in this estate would be distributed under the residuary clause of the will, that is, one-half going to the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, and the other half of the heirs that you have named?

37 A. I could not answer that question.

Q. I simply ask if that is your understanding.

A. I really do not know. We could write to the administrator down there.

By the APPRAISER: She left considerable property down in Kentucky, didn't she?

A. I have reason to believe she did, but I do not know anything about that. I can find out absolutely and put it in the record."

JOHN B. KNIGHT, likewise produced at the said hearing, testified as follows:

Q. What is your name?

A. John B. Knight.

Q. What is your business, Mr. Knight?

A. Real estate.

Q. How long have you been in the real estate business?

A. Since 1871.

Q. You are the administrator of the estate of Fanny Speed, deceased, are you not?

A. Yes, sir.

Q. In the probate court of Cook county?

A. Yes, sir.

Q. Are you acquainted with the property that Fanny Speed died seized and possessed of in the State of Illinois?

A. Yes, sir.

Q. Did she leave any personal property?

A. None in this State that has come to my notice.

38 Q. She left some real estate, did she not?

A. She left an undivided half interest in a piece of property on Dearborn street between Washington and Madison; the legal description I cannot give, but the street numbers I can.

Q. The legal description is set forth in the inventory filed by you in the probate court?

A. Yes, sir. The property is 76 feet front on Dearborn street by 80 feet in depth.

Q. You have had charge of that property, have you not?

A. Yes, sir; I have managed that property ever since I have been in Chicago.

Q. For how many years?

A. About thirty years.

Q. What in your opinion was the fair market value of that property in August, 1902?

A. $420,000 for the whole property, which would mean $210,000 for Mrs. Speed's half interest.

Q. Was there a contract made by Mr. Netcher and the owners of that property for the purchase of that property by Mr. Netcher?

A. Yes, sir.

Q. When was that contract entered into?

A. My recollection is that the contract was made in the winter of 1902—either the winter of 1902 or the spring of 1903; the month I cannot recollect.

Q. What was the purchase price expressed in that contract?

A. It was at the rate of $480,000 for the whole property.

Q. Were the negotiations for the purchase of that property by Mr. Netcher entered into prior to the death of Fanny Speed?

39 A. The negotiations for the purchase were entered into prior, but the consummation of the transaction was after her death. She died in August, 1902.

Q. What proposition did the owners at that time make to Mr. Netcher for the sale of the property?

A. Prior to Mrs. Speed's death?

Q. Yes.

A. They made no positive proposition. Mr. Netcher had offered them $450,000, which they declined. In September 1902 I went to New York with an offer from Mr. Netcher of $475,000 for the property, and after reaching New York and seeing Mr. James W. Henning, who was one of the owners of the Henning undivided half interest and one of the heirs of Mrs. Speed's estate, one of the beneficiaries under the will, he said he thought if Mr. Netcher would come to $480,000, so far as the interests of the Hennings' and Mrs. Speed's heirs were concerned, that they would close a contract. That would involve an actual title to three-fourths of the property.

Q. Did Mrs. Speed at that time refuse the offer of $450,000?

A. It was refused through James W. Henning, of New York, who represented Mrs. Speed in all her transactions.

Q. How long prior to her death was that offer made by Mr. Netcher?

A. The offer was made in the month of June, 1902, as I recall it. It was about two months prior to Mrs. Speed's death.

Q. Is Mrs. Speed's half interest in that property in any way encumbered?

40 A. Not that I know of.

Q. There is a supposed mortgage of $100,000 on that property. Is the estate of Fanny Speed in any way liable?

A. I have been informed by Mr. James W. Henning that it is not. Mrs. Speed joined in this mortgage to enable them to facilitate a loan through some life insurance company in New York, I think the New York Life or the Mutual Life, one of the life insurance companies, for $100,000.

Q. So that at the death of Fanny Speed her half interest in that property was clear and unencumbered.

A. That is my understanding.

Q. What was the net annual income of the property at the time of her death?

A. The gross rents were about $13,800; the taxes for 1902 were $4,027.08 and the insurance was $500.00. Those are the main fixed charges. That would leave $9,273.00 net.

Q. That is the net rental income for the year?

A. Yes, for the whole property. That is a little over two and three tenths per cent. on $400,000."

In behalf of the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, there was introduced in evidence, duly certified, an act of the legislature of the State of Kentucky, bearing date January 15, 1867, entitled, An act of incorporation for the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church.

And it was stipulated and agreed, for the purpose of shortening the record, for the State of Illinois and the said board of edu-

41 cation, that the purposes for which said corporation was organized, as determined by said act, are as follows:

"To form an educational fund to be styled the centenary educational fund, for the promotion of literature, education, art, morality and religion, within the bounds of said conference."

And it was likewise stipulated and agreed between counsel that the funds and income of the said corporation are required to be held, and are held, and used exclusively for educational and religious purposes, and that said corporation is not permitted to make dividends or distribution or profits or assets, among its members or stockholders.

And it was further stipulated upon the record, by the counsel for the respective parties, that the funds of said corporation are ex-

pended for the purposes for which it was organized wholly within the limits of the State of Kentucky, and that the said corporation does not have or maintain an office in the State of Illinois, or engage in educational or religious work therein.

And it was further stipulated and agreed by the parties that the succession of the property in Illinois, described in the inventory, will pass under the residuary or last clause of the will, heretofore introduced in evidence, and that there is sufficient personal
42 property in the State of Kentucky to pay all of the indebtedness in that State, the expenses of administration in that State and the specific legacies mentioned in the will and codicils, and the only claimed indebtedness is the damage suits mentioned in the testimony of Mr. McIlvaine, as follows:

"There were four damage suits brought against Mrs. Speed, and the Hennings, owning one-half of the property, in Mrs. Speed's life time. Three of those suits have been settled, one for the sum of $1500, in January 1904, and two for $1250 each, in May, 1902. The remaining suit is pending as stated in my previous testimony."

Be it further remembered and certified that the foregoing was all the evidence introduced, on the hearing of said cause.

And, inasmuch as the matters above set forth do not appear of record in this suit, the said Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, a corporation, tenders this certificate of evidence and prays that the same may be certified, under the hand and seal of the judge of this court, and thereby made a part of the record in this cause and it is certified accordingly this 3rd day of March A. D. 1905.

ORRIN N. CARTER, Judge. [SEAL.]

O. K.
ASHCRAFT.

43 STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court of Cook County.

In the Matter of the Estate of FANNY SPEED, Deceased. No. 22204.

Bill of Exceptions.

That thereupon the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, by Aldrich & McAuley, its attorneys, asked the court to hold that said corporation was exempt from any or all inheritance taxes under the act of May 10, 1901, amending an act entitled "An act to tax gifts, legacies and inheritances in certain cases, and to provide for the collection of the same;" approved June 15, 1895;

And that the imposition of such a tax upon said corporation when corporations organized for like purposes under the laws of the

State of Illinois are exempt therefrom, is in conflict with article IX section 1 of the constitution of the State of Illinois;

And that the imposition of a tax upon said corporation while corporations organized for like purposes under the laws of the State of Illinois are exempt renders said act void as to this corporation as in conflict with the XIV amendment to the Constitution of
44 the United States, in that it abridges the privileges and immunities of this corporation, who is a citizen of the United States, and denies to this corporation the equal protection of the laws; but the court refused each of said holdings and propositions, to which holdings and decisions of the court the said Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, by Aldrich & McAuley, its attorneys, then and there duly excepted; and thereupon the court made and entered its order holding said Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church liable to an inheritance tax of six thousand two hundred eighty and fifty one-hundredths dollars, to which the said Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, by its attorneys, then and there duly objected and excepted.

And inasmuch as the matters above set forth do not appear of record in this suit, the said Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, a corporation, tenders this its bill of exceptions, and prays that the same may be signed and sealed under the hand and seal of the judge of this court, and thereby made a part of the record in this cause, which is done accordingly on this 3rd day of March, A. D. 1905.

ORRIN N. CARTER, [SEAL.]
Judge of said Court.

O. K.
ASHCRAFT.

45 And afterwards, to-wit; on the 4th day of March A. D. 1905 the following among other proceedings were had by and before said court and entered or record to-wit:

In the Matter of the Estate of FANNY SPEED, Deceased. 22204.

Now on this day the court having examined the appeal bond in said cause doth approve thereof and it is ordered that the same be filed.

And afterwards, to-wit: on the 4th day of March A. D. 1905 there was filed with the clerk of said court a certain bond in words and figures as follows, to-wit:

Know all men by these presents, that we, Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, a corporation, and the United States Fidelity and Guaranty Com-

pany of Baltimore, a corporation, are held and firmly bound unto the People of the State of Illinois in the penal sum of ten thousand dollars ($10,000) lawful money of the United States, for the payment of which well and truly to be made we bind ourselves,
46 our successors and assigns, jointly, severally and firmly, by these presents.

Witness our hands and seals, this third day of March A. D. 1905.

The condition of the above obligation is such, that whereas, on the first day of March, A. D. 1905, an order and decision was entered by the county court of Cook county, State of Illinois, imposing an inheritance tax against the above bounded Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, in the sum of six thousand two hundred eighty and fifty one-hundredths dollars ($6280.50) from which order of the said county court for Cook county, State of Illinois, the said Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church has prayed for and obtained an appeal to the supreme court of the State of Illinois.

Now, therefore, if the said Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church shall duly prosecute its said appeal with effect, and moreover pay the amount of the said tax, costs and interest to be rendered against it in case the said judgment shall be affirmed in the supreme court, then the above obligation to be void, otherwise to remain in full force and virtue.

[SEAL.] BOARD OF EDUCATION OF THE KENTUCKY ANNUAL CONFERENCE OF THE METHODIST EPISCOPAL CHURCH,
By ALDRICH & McAULEY, Attorneys.
THE UNITED STATES FIDELITY AND GUARANTY COMPANY,
By GEORGE D. WEBB, Attorney.

Approved:
ORRIN N. CARTER,
County Judge.

47 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Peter B. Olsen, clerk of the county court of Cook county, in the State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true, correct and complete transcript of the record in a certain cause lately pending in said court.

In the matter of the estate of Fanny Speed deceased, (except the bill of exceptions) the original bill of exceptions being by stipulation incorporated herein and made a part of this transcript of the record.

General No. 22204.

All of which appears from the records and files of my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this 8th day of March A. D. 1905.

[SEAL.] PETER B. OLSEN,
Clerk of the County Court.

48 In the Supreme Court of Illinois, April Term, 1905.

In the Matter of the Estate of FANNY SPEED, Deceased.

Appeal from the County Court of Cook County.

Appeal of the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church.

Now comes The Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church by Charles H. Aldrich and Henry S. McAuley, its attorneys, and assigns the following errors to the order and decree of said court holding that the said Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church was liable to an inheritance tax of $6280.50 because of a certain devise to it by Fanny Speed, deceased.

First. The court erred in holding said corporation liable to said tax of $6280.50 for that said corporation is by reason of its organization and the purposes of said organization as shown by the record in this case, exempt from such tax under the act of May 10, 1901 amending an act entitled "An act to tax gifts, legacies and inheritances in certain cases and to provide for the collection of the same" approved June 15, 1895.

Second. The court erred in holding the said corporation liable to said tax of $6280.50 because the imposition of such a tax upon said corporation when corporations organized for like purposes under the laws of the State of Illinois are exempt therefrom is in con-
49 flict with article IX section 1 of the constitution of the State of Illinois.

Third. The court erred in holding said corporation liable to said tax of $6280.50 because the imposition of a tax upon this corporation while corporations organized for like purposes under the laws of the State of Illinois are exempt renders said act void as to this corporation as in conflict with the XIV amendment to the Constitution of the United States in that it abridges the privileges and immunities of said corporation, which is a citizen of the United States, and *and* denies to this corporation the equal protection of the laws.

And the said Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church says that in the record and proceedings aforesaid there is manifest error as above alleged, and it prays that the order and decree of the said county court holding the said Board of Education of the Kentucky Annual Conference of the

Methodist Episcopal Church liable to an inheritance tax of $6280.50, may be in all things reversed and annulled and set aside.

And so it will ever pray.

THE BOARD OF EDUCATION OF THE KENTUCKY ANNUAL CONFERENCE OF THE METHODIST EPISCOPAL CHURCH,
By ALDRICH & McAULEY, Attorneys.

CHARLES H. ALDRICH,
HENRY S. McAULEY,
Of Counsel.

50 At a supreme court, begun and held at Springfield on Tuesday, the fourth day of April in the year of our Lord one thousand nine hundred and five, within and for the State of Illinois.

Present: James B. Ricks, chief justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; James H. Cartwright, justice; Carroll C. Boggs, justice; John P. Hand, justice; Guy C. Scott, justice; William H. Stead, attorney general; Benjamin H. Brainerd, sheriff.

Attest: CHRISTOPHER MAMER, Clerk.

Be it remembered, to-wit, on the fourteenth day of April, A. D. 1905, the following proceedings were had in said court, and entered of record, which proceedings are in the words and figures following, to-wit:

In the Matter of the Estate of FANNY Speed, Deceased; Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church *v.* PEOPLE STATE OF ILLINOIS.	No. 4148. Appeal County Court, Cook.

51

In the Matter of the Estate of Fanny Speed, Deceased; Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church *vs.* PEOPLE STATE OF ILLINOIS.	No. 4148. Appeal County Court, Cook.

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that —— —— appellant, hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned

herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee —— —— having entered motion to affirm said judgement and for costs and *procedendo*, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court:

Therefore it is ordered by the court that this cause be and the same is hereby taken under advisement.

52 At a supreme court, begun and held at Springfield on Tuesday, the sixth day of June, in the year of our Lord one thousand nine hundred and five, within and for the State of Illinois.

Present: James H. Cartwright, chief justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Carroll C. Boggs, justice; John P. Hand, justice; James B. Ricks, justice; Guy C. Scott, justice; William H. Stead, attorney general; Benjamin H. Brainerd, sheriff.

Attest: CHRISTOPHER MAMER, Clerk.

Be it remembered, that afterward, to-wit, on the twenty-third day of June, 1905, the opinion of the court was filed in the words and figures following, to-wit:

In the Matter of the Estate of FANNY SPEED, Deceased. No. 4148.

Error to —. Appeal from County Court, Cook.

53 Docket No. 4148—Ag. 25—April, 1905.

In the Matter of the Estate of FANNIE SPEED, Deceased.

Mr. Justice BOGGS delivered the opinion of the court:

Fannie Speed, deceased, late a citizen and resident of the State of Kentucky, by her last will and testament devised certain real estate in the city of Chicago to the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, a corporation organized under and existing by virtue of the laws of the State of Kentucky, with power to form an educational fund, to be styled the "Centenary educational fund," for the promotion of literature, education, art, morality and religion within the bounds of said conference, to be held and used exclusively for edueational and religious purposes in the State of Kentucky, and it was stipulated that said corporation is not permitted to make dividends or distribution of profits or assets among its members or stockholders, and that said corporation does not have or maintain an office in the State of Illinois or engage in educational or religious work therein. The county

court of Cook county ruled that under the provisions of "An act to tax gifts, legacies and inheritances in certain cases, and to provide for the collection of the same," approved June 15, 1895, and the act amendatory thereof approved May 10, 1901, said board of education was liable to pay the sum of $6280.50 as a succession or inheritance tax on the right to take the property under said devise. This appeal questions the correctness of that ruling.

The amendatory act of 1901 was adopted for the purpose of relieving certain bequests, devises or gifts from the operation of the original act of 1895. The amendatory act reads as follows: "When the beneficial interests of any property or income therefrom shall pass to or for the use of any hospital, religious, educational, Bible, missionary, tract, scientific, benevolent or charitable purpose, or to any trustee, bishop or minister of any church or religious denomination, held and used exclusively for the religious, educational or charitable uses and purposes of such church or religious denomination, institution or corporation, by grant, gift, bequest or otherwise, the same shall not be subject to any such duty or tax, but this provision shall not apply to any corporation which has the right to make dividends or distribute profits or assets among its members." (Hurd's Stat. 1901, p. 1512.)

There is nothing in this amendatory act to indicate that it
54 was the legislative intent that its provisions should apply to corporations created under the laws of a sister State. It is a universally accepted rule of construction that an act of the General Assembly of a State granting powers, privileges or immunities to corporations must be held to apply only to corporations created under the authority of that State over which such State has the power of visitation and control, unless the intent that the act shall apply to other than domestic corporations is plainly expressed in the terms of the act. Dos Passos on Inheritance Tax Law, (2d ed.) sec. 36; People *v.* Western Seaman's Friend Society, 87 Ill. 246; Baille's Estate, 38 N. E. Rep. 1007; Humphrey *v.* State, 70 *id.* 957.

The appellant board contends that the amendatory act of 1901, if construed as having operation only to exempt corporations organized under the laws of the State of Illinois, is inconsistent with the principles of taxation established by sections 1 and 2 of article 9 of the constitution of the State of Illinois, and hence that it should not be so construed. Section 1 of article 9 of the constitution of 1870 has reference only to general taxation, and it is conceded in no manner restricts the power of the General Assembly to lay a tax upon the right to succeed to the title to property within the State by inheritance from a deceased owner of such property or by devises and bequests to be found in a will of such deceased owner. It is, however, contended that said section 1 establishes the principle that all taxation shall be uniform as to the class upon which it operates; that section 2 of article 9 limits the power of the General Assembly, when enacting statutes providing for the taxation of other objects or subjects than such as are referred to in section 1, to the extent of requir-

ing that the principles of taxation established by said section 1 shall be observed, viz., that any tax so imposed shall be uniform as to the class upon which it operates. The argument further is: "Uniformity of taxation, as extending to persons or property in the same class, implies, necessarily, uniformity of exemption as to these same persons or property. Lack of uniformity in the latter respect would be destructive of the former," and it is urged in the same behalf that under the construction given to the amendatory section of the inheritance law, property devoted to educational, religious or charitable purposes is to be subjected to the inheritance or succession tax if the corporation selected to administer the trust is one organized under the laws of another State than that of Illinois, and that
55 property devoted to the same purposes shall be relieved of the tax if committed to the administration of a corporation created under the laws of the State of Illinois.

Inheritance or succession taxes are not laid on the property inherited or taken by devise or bequest, but on the right to inherit or to take such property. The right to take property in pursuance of the statute of descent or of the statute pertaining to wills is property, but only for the reason that the law-making body of the State has seen fit to create the right to so take by inheritance or by devise or bequest. No person or corporation can inherit property or can take by devise or bequest except when authorized so to do by an act of the legislature. Such right may at any time be abrogated prospectively, at the will of the legislature; or, in the exercise of the same power in quality though lesser in degree, the law-making department of the State may modify, regulate or impose conditions on the right to succeed by inheritance or devise to property which was owned by a person who has died. Thus, the power of the legislature to lay a tax on the right of any person or corporation to take property by inheritance or by devise or bequest is found to be clear and undoubted. In laying such a tax the legislature may consider the relation which the person or corporation given the right of succession sustains to the deceased, to the property or to the State, and may regulate the amount of the tax to be required in view of such relation, and in exercising this power may lay a tax on the right of one class of persons or corporations to take and may deem it wise to impose no tax upon the right of other classes of persons or corporations to take. Embraced within the power possessed by the legislature to abrogate the right to take is the power to qualify that right and to impose conditions and burdens upon it. If a burden in the nature of taxation is laid upon the right, the constitutional principle that taxes must be uniform as to the classes upon which it operates must be observed. Subject to this restriction the legislature may lay taxes upon the right of one class of persons and corporations to succeed to property of deceased persons and exempt the right of other classes of persons or corporations from such taxation.

A clear distinction exists between domestic corporations and corporations organized under the laws of other States. Such corpo-

rations fall naturally into their respective classes. Over the one,—that which the State has created,—the State has certain powers of control, and the other is beyond its jurisdiction.
56 Those of its own creation have been endowed with corporate powers for the purpose of subserving the interests of the State and its people; those which have been given life by the laws of a sister State have entirely different ends and objects to accomplish. The law making power would find many weighty considerations authorizing the classification of foreign and domestic corporations into different classes and justifying the creation of liability on the part of foreign corporations to pay a tax on the right to take property by descent, devise or bequest, under the laws of the State, and at the same time leaving the right of a domestic corporation so to take, free of any such exaction.

Nor is the amendatory enactment, though so construed as to create a liability against a corporation existing in virtue of the laws of another State to pay taxes on the right to take property by bequest or devise, from the payment whereof home corporations are exempted, in conflict with the first clause of section 2 of article 4 of the Constitution of the United States or of the first section of the fourteenth amendment thereto. Said first clause of section 2 of article 4 is as follows: "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." Section 1 of the fourteenth amendment reads as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."
57 It has frequently been declared to be a well established principle of constitutional law that a corporation is not a "citizen," within the meaning of the first clause of section 2 of article 4 of the Constitution of the United States, which declares the citizens of each State shall be entitled to all privileges and immunities of citizens of the several States. (Ducat *v.* City of Chicago, 48 Ill. 172; Same *v.* Same, 10 Wall. 410; 10 Cyc. 150; Tatem *v.* Wright, 23 N. J. L. 429; Pembia Con. Silver Mining Co. *v.* Pennsylvania, 125 U. S. 181; Humphrey *v.* State, 70 N. E. Rep. 957.) It is very clear the word "citizen," as employed in the first section of the fourteenth amendment has the same meaning as given the word in the first clause of section 2 of article 4 of the Constitution. The first sentence of the first section of said fourteenth amendment is devoted to the definition of the
58 meaning of the word "citizen." It declares that all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States. The subsequent declaration, preserving unabridged the privileges and im-

munities of citizens of the United States, has reference only to the natural persons declared to be citizens by the preceding sentence. A corporation is a "person" within the meaning of the concluding clause of the first section of the fourteenth amendment, which declares that no State shall deprive any person of life, liberty or property without due process of law or deny to any person within its jurisdiction the equal protection of its laws. A corporation is a mere creature of the local law whereby it has its existence. It is not a citizen of the United States, and has no right, because of its chartered powers, to exercise corporate power beyond the territorial limits of the State which created it. Any State of the Union may absolutely and entirely exclude corporations organized under the laws of another State, or may impose such conditions for the admission of foreign corporations within the limits of its jurisdiction as its law-making body may consider to be requisite for the protection of its interests or policies. (Magoun *v.* Illinois Trust and Savings Bank, 170 U. S. 283.) Foreign corporations are not "within the jurisdiction" of a State other than that which created them, within the meaning of those words as employed in section 1 of the fourteenth amendment, until they have fulfilled the conditions authorizing their admission into such State. (Blake *v.* McClurg, 172 U. S. 239.) The State of Illinois has adopted certain requirements to be complied with by foreign corporations organized for pecuniary profit who desire to transact business within the limits of this State, but we are not aware that authority has been granted by any enactment of the State authorizing a corporation organized, as is the appellant board, by a foreign State, to accumulate funds or income to be used for educational and religious purposes in the State in which such foreign corporation was created, to exercise its chartered powers in this State. The stipulated facts show the appellant board has never engaged in this State in the educational or religious work it was chartered to promote and advance; that it does not maintain and never had an office in this State, and that, in fact, it has no power to devote funds which it may receive to educational and religious purposes beyond the bounds of the limits of the State of Kentucky. It is not a "citizen" of the United States and not a person "within the jurisdiction of the State" of Illinois, and hence cannot invoke the benefit and protection of the provisions of the Federal Constitution here under consideration.

The judgment is affirmed.

Judgment affirmed.

59 STATE OF ILLINOIS, Supreme Court, } ss:

I, Christopher Mamer, clerk of the supreme court of the State of Illinois, and keeper of the records and seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said supreme court in the above entitled cause of record in my office.

This copy is not to operate as a mandate in any event. Mandate will be issued only on request and payment of costs.

In testimony whereof, I have set my hand and affixed the seal of the said supreme court at Springfield, this 25th day of July, A. D. 1905.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of the Supreme Court.

60 At a supreme court, begun and held at Springfield on Tuesday, the sixth day of June, in the year of our Lord one thousand nine hundred and five, within and for the State of Illinois.

Present: James H. Cartwright, chief justice. Benjamin D. Magruder, justice, Jacob W. Wilkin, justice, Carroll C. Boggs, justice, John P. Hand, justice, James B. Ricks, justice, Guy C. Scott, justice, William H. Stead, attorney general, Benjamin H. Brainerd, sheriff.

Attest: CHRISTOPHER MAMER, Clerk.

Be it remembered, to-wit, on the twenty-third day of June, A. D. 1905, the same being one of the days of the term of court aforesaid, the following proceedings were by said court, had and entered of record, to-wit:

In the Matter of the Estate of FANNY Speed, Deceased; Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church *v.* PEOPLE STATE OF ILLINOIS.	No. 4148. Appeal County Court, Cook.

And now, on this day, this cause having been argued by counsel, and the court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and now being sufficiently advised of and concerning the premises, for that it appears to the court now here, that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and that in that record there is no error: Therefore, it is considered by this court that the judgment aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matters and things therein assigned for error.

And it is further considered by the court, that the said appellee recover of and from the said appellant costs by it in this behalf expended, and that it have execution therefor.

I, Christopher Mamer, clerk of the supreme court of the State of Illinois, do hereby certify that the foregoing is a true copy of the final order of the said supreme court in the above entitled cause of record in my office.

In testimony whereof, I have set my hand and affixed the seal of the said supreme court at Springfield, this twenty-fifth day of July, in the year of our Lord one thousand nine hundred and five.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of the Supreme Court.

61 STATE OF ILLINOIS, *ss.*:

In the Supreme Court of Illinois.

In the Matter of the Estate of FANNY SPEED, Deceased. No. 4148.

Petition for Writ of Error.

Now comes The Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, plaintiff in error herein, and says that on or about the 23d day of June, A. D. 1905, this court entered judgment herein in favor of the People of the State of Illinois and against this plaintiff in error, affirming the judgment of the county court of Cook county, imposing a certain tax, amounting to $6280.50, as a succession or inheritance tax on certain property devised to this plaintiff in error by the last will and testament of Fanny Speed, deceased, a citizen and resident of the State of Kentucky, and your petitioner shows that in said judgment of affirmance and the proceedings had prior thereunto in this cause certain errors were committed, to the prejudice of this plaintiff in error, all of which will more in detail appear from the assignment of errors which is filed with this petition, whereby it appears there was drawn in question the validity of an authority exercised under the statute of Illinois, on the ground that the authority as exercised was repugnant to the Constitution of the United States, and the decision is in favor of the validity of the authority as exercised;

62 and whereby it likewise appears that a right, privilege or immunity was claimed under the Constitution of the United States by the said plaintiff in error, and the decision is against the right, privilege or immunity specially set apart or claimed by said plaintiff in error.

Wherefore this plaintiff in error prays that a writ of error may issue in this behalf to the Supreme Court of the United States, for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

CHARLES H. ALDRICH,
HENRY S. McAULEY,
Attorneys for Plaintiff in Error.

Writ of error allowed upon the execution of a bond by plaintiff in error in the sum of ten thousand dollars. Said bond, when approved, to act as a supersedeas.

Dated this 28th day of July, A. D. 1905.

JAMES H. CARTWRIGHT,
Chief Justice of the Supreme Court of Illinois.

Issued writ of error & copy for defendant in error July 31, 1905.

MARSHALL T. SAMPSELL,
[SEAL.] Clerk Cir. Ct. of U. S., Northern Dist. of Ills.

Filed August 2, 1905.
C. MAMER, Clerk.

63 (Endorsement on cover:) No. 4148. In the supreme court of Illinois. *In re* estate of Fanny Speed, deceased. Appeal of the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church. Appeal bond. Charles H. Aldrich, Henry S. McAuley, att'ys for plaintiff in error.

64 STATE OF ILLINOIS, *ss*:

In the Supreme Court of Illinois.

In the Matter of the Estate of FANNY SPEED, Deceased. No. 4148

Know all men by these presents, that the undersigned, Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, and the United States Fidelity & Guaranty Company, are held and firmly bound unto the People of the State of Illinois, in the penal sum of ten thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, our successors and assigns by these presents.

Witness our hands and seals this 12 day of July, A. D. 1905.

The condition of the above obligation is such that, whereas, the supreme court of the State of Illinois did, on the 23d day of June, 1905, affirm the judgment of the county court of Cook county, imposing an inheritance tax amounting to $6280.50, upon certain devises or bequests made to the above bounden Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, from which action in affirming the said judgment the said Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church has prayed and obtained a writ of error to the Supreme Court of the United States.

Now if the said Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church shall duly prosecute said writ of error to and in said court, and in the event that
65 the judgment of the supreme court of the State of Illinois is affirmed, shall pay the said tax, then and in that event this

bond shall become void, otherwise to remain in full force and effect.

THE BOARD OF EDUCATION OF THE KENTUCKY ANNUAL CONFERENCE OF THE METHODIST EPISCOPAL CHURCH,
By AMON BOREING, Its President.

Attest:
C. B. NORDEMAN,
Secretary of the Board or Education
of the Kentucky Annual Conference
of the Methodist Episcopal Church.

{Seal Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church.}

THE UNITED STATES FIDELITY AND GUARANTY COMPANY,
By LEWIS H. WEBB, Attorney in Fact.

{The United States Fidelity & Guaranty Company, Incorporated, 1896.}

Approved, this 28th day of July, A. D. 1905.

JAMES H. CARTWRIGHT,
Chief Justice of the Supreme Court of Illinois.

Filed August 2, 1905.
C. MAMER, Clerk.

66 UNITED STATES OF AMERICA, }
State of Illinois. }

In the Supreme Court of Illinois.

In the Matter of the Estate of FANNY SPEED, Deceased. No. 4148.

Appeal of the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church.

Assignment of Errors on Petition for Writ of Error to the Supreme Court of the United States.

The plaintiff in error in this action, in connection with its petition for writ of error, makes the following assignment of errors which it avers occurred upon the trial of the cause, to-wit:

1. The court erred in holding this plaintiff in error liable to said tax of $6280.50, because the imposition of a tax upon this plaintiff in error while corporations organized for like purposes under the laws of the State of Illinois are exempt, renders the act of May 10, 1901, amending an act entitled "An act to tax gifts, legacies and inheritances in certain cases and to provide for the collection of the

same;" approved June 15, 1895, void as to this plaintiff in error, and is in conflict with the fourteenth amendment to the Constitution of the United States, in that it abridges the privileges and immunities of this plaintiff in error, which is a citizen of the United States, deprives the plaintiff in error of its property without due process of law, and denies to this plaintiff in error the equal protection of the laws.

67 2. The court erred in holding said corporation liable to said tax of $6280.50, for that said corporation is by reason of its organization and the purposes of said organization, as shown by the record in this case, exempt from such tax under the act of May 10, 1901, amending an act entitled "An act to tax gifts, legacies and inheritances in certain cases and to provide for the collection of the same;" approved June 15, 1895.

CHARLES H. ALDRICH,
HENRY S. McAULEY,
Attorneys for Plaintiff in Error.

(Endorsements on cover:) No. 4148. In the supreme court of Illinois. *In re* estate of Fanny Speed, deceased. Assignment of errors. Aldrich & McAuley, Home Insurance building, att'ys for pl'ff in error. Filed August 2, 1905. C. Mamer, clerk.

68 (Endorsement on cover:) No. 4148. In the supreme court of Illinois. *In re* estate of Fanny Speed, deceased. Petition for writ of error. Aldrich & McAuley, Home Insurance building, att'ys for petitioner.

Endorsed on cover: File No. 19,880. Illinois supreme court. Term No. 378. The Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, plaintiff in error, *vs.* The People of the State of Illinois. Filed August 21st, 1905. File No. 19,880.

FILE COPY.

Office Supreme Court, U. S.
FILED.
NOV 5 1906
JAMES H. McKENNEY,
CLERK.

No. **103.**

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D., 1906.

THE BOARD OF EDUCATION OF THE KENTUCKY ANNUAL CONFERENCE OF THE METHODIST EPISCOPAL CHURCH.
Plaintiff in Error.

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error.

In Error to the Supreme Court of the State of Illinois

Brief and Argument on behalf of the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, Plaintiff in Error.

CHARLES H. ALDRICH,
HENRY S. McAULEY,
ATTORNEYS FOR PLAINTIFF IN ERROR.

LAWRENCE MAXWELL, JR.,
OF COUNSEL.

BARNARD & MILLER, PRINTERS, CHICAGO

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1906.

No. 103.

THE BOARD OF EDUCATION OF THE KENTUCKY ANNUAL CONFERENCE OF THE METHODIST EPISCOPAL CHURCH, *Plaintiff in Error,* *vs.* THE PEOPLE OF THE STATE OF ILLINOIS, *Defendant in Error.*	In Error to the Supreme Court of the State Illinois.

Brief and Argument on behalf of The Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, Plaintiff in Error.

This writ of error is taken to reverse the action of the Supreme Court of Illinois affirming the judgment of the County Court of Cook County imposing a succession tax of $6,280.50 against the board of education of the Kentucky Annual Conference of the Methodist Episcopal Church. The opinion of the court appears in the record (pp. 28-32) and is reported in 216 Ill., 23.

Fanny Speed, a citizen and resident of Kentucky, died testate on August 10, 1902, seized of certain real property in Chicago, Illinois. By her last will

(Rec., 15-16), she made certain money bequests to build a new Methodist Church and parsonage in Louisville; also to certain church extension, foreign and home missionary societies; and after making disposition of pictures, plate, books, etc., it was provided (Rec., 16): "The other half of my estate given to the board of education of the Kentucky Annual Conference of the Methodist Episcopal Church to form a part of the educational fund of said conference, to be held, invested and administered for educational purposes by said board as other properties forming a part of said fund are held, invested and administered."

The board of education of the Kentucky Annual Conference of the Methodist Episcopal Church was organized by special act of the Legislature of the State of Kentucky, bearing date January 15, 1867, and entitled "An Act of Incorporation for the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church". It stipulated in the record (Rec., 22) that the purposes for which the said corporation was organized as determined by the act of incorporation are:

"To form an educational fund to be styled the centenary educational fund, for the promotion of literature, education, art, morality and religion, within the bounds of said conference."

And it was likewise stipulated and agreed between counsel that the funds and income of the said corporation are required to be held, and are held, and used exclusively for educational and religious purposes, and that said corporation is not permitted to make dividends or distribution or profits or assets, among its members or stockholders.

And it was further stipulated upon the record, by the counsel for the respective parties, that the funds of said corporation are expended for the purposes for which it was organized wholly within the limits of the State of Kentucky, and that the said corporation does not have or maintain an office in the State of Illinois, or engage in educational or religious work therein.

And it was further stipulated and agreed by the parties that the succession of the property in Illinois, described in the inventory, will pass under the residuary or last clause of the will, heretofore introduced in evidence, and that there is sufficient personal property in the State of Kentucky to pay all of the indebtedness in that state, the expenses of administration in that state and the specific legacies mentioned in the will and codicils, and the only claimed indebtedness in Illinois are the damage suits mentioned in the testimony of Mr. McIlvaine (Rec., 23).

The appraiser reported the value of the estate passing under the clause above quoted to the Board of Education, as the appellant will hereinafter be designated for the sake of brevity, at $104,675.00 and imposed a succession tax of 6 per cent. of this amount (Rec., 14.)

From this action the Board of Education prosecuted an appeal to the County Court of Cook County, where the action of the appraiser was approved and judgment entered for $6,280.50, the amount of such tax. (Rec., 7-8.) From this action an appeal was prosecuted to the Supreme Court of the State of Illinois, which affirmed the action of the

lower court, to reverse which the present writ of error is prosecuted.

ASSIGNMENT OF ERRORS.

The errors assigned are as follows:

1. The court erred in holding this plaintiff in error liable to said tax of $6,280.50, because the imposition of a tax upon this plaintiff in error while corporations organized for like purposes under the laws of the State of Illinois are exempt, renders the act of May 10, 1901, amending an act entitled "An Act to tax gifts, legacies and inheritances in certain cases and to provide for the collection of the same", approved June 15, 1895, void as to this plaintiff in error, and is in conflict with the Fourteenth Amendment to the Constitution of the United States, in that it abridges the privileges and immunities of this plaintiff in error, which is a citizen of the United States, deprives the plaintiff in error of its property witihout due process of law, and denies to this plaintiff in error the equal protection of the laws.

2. The court erred in holding said corporation liable to said tax of $6,280.50, for that said corporation is by reason of its organization and the purposes of said organization, as shown by the record in this case, exempt from such tax under the act of May 10, 1901, amending an act entitled "An Act to tax gifts, legacies and inheritances in certain cases and to provide for the collection of the same;" approved June 15, 1895.

The questions thus presented were in the record

from the beginning, and were decided adversely to the contention of the plaintiff in error by the Supreme Court of Illinois.

BRIEF.

I.

The appellant, by probating the will through which its succession is derived, appearing before the state appraiser in the inheritance tax proceeding, appealing from the action of such appraiser to the County Court of Cook County, and from its action to the Supreme Court of Illinois, brought itself within the jurisdiction of the State of Illinois, within the meaning of the Fourteenth Amendment.

Black v. *Caldwell*, 83 Fed., 880, 885.

Christian Union v. *Yount*, 101 U. S., 352, 356.

(a) This is especially so as there are no rules prescribed by the laws of Illinois regarding the admission to the state of corporations *not* for pecuniary profit, and the right of such corporations to take and hold property in Illinois is fully established.

Santa Clara Female Academy v. *Sullivan*, 116 Ill., 375.

Christian Union v. *Yount*, 101 U. S., 352.

Pennsylvania Co. for Ins. on Lives v. *Bauerle*, 143 Ill., 459.

(b) The imposition of the succession tax necessarily implies that the person whose right to succeed is so taxed is within the jurisdiction of the State.

Passenger Cases, 7 How., 283, 422.

McGehees Due Process of Law, p. 218.

Dewey v. *Des Moines,* 173 U. S., 193, 204.

Louisville v. *Jeffersonville Ferry Co.,* v. *Kentucky,* 188 U. S., 385, 396.

Union Transit Co. v. *Kentucky,* 199 U. S., 194, 204.

The prohibitions of the Fourteenth Amendment extend to all state agencies, whether executive, legislative or judicial.

Scott v. *McNeal,* 154 U. S., 34, 45.

Chicago, etc., Ry. Co. v. *Chicago,* 166 U. S., 226, 234.

Missouri v. *Dockery,* 191 U. S., 165, 170.

Huntington v. *New York,* 118 Fed., 683, 686.

III.

An inheritance tax is not a tax upon property, but upon the privilege or right of succession to property.

United States v. *Perkins,* 163 U. S., 625, 628.

Magoun v. *Ill. Trust & Sav. Bank,* 170 U. S., 283, 258.

IV.

A different rule obtains as to claimed exemptions from a general and a special tax, to which latter class the imposition in the case at bar belongs.

Eidman v. *Martinez,* 184 U. S., 578, 583.
Catlin v. *Trustees,* 113 N. Y., 133, 140, 141.
In re Swift's Estate, 137 N. Y., 77, 86, 87.
Gurr v. *Scudds,* 11 Exch., 190.
U. S. v. *Wigglesworth,* 2 Story, 369.
U. S. v. *Watts,* 1 Bond, 580.

V.

It is conceded that the respective states have plenary power to regulate the tenure of property within their respective limits, the modes of its acquisition and transfers, the rules of its descent, and the extent to which a testamentary disposition may be exercised by its owners, subject, however, to the equal rights clauses of the Constitution of the United States.

Mager v. *Grima,* 8 How., 490, 493.
United States v. *Fox.,* 94 U. S., 315.
Magoun v. *Ill. Trust & Sav. Bank,* 170 U. S., 283, 292, 294.
Atchison, Topeka &c. Ry. Co. v. *Matthews,* 174 U. S., 96, 105.

VI.

The Constitution of the United States was largely the result of the demand that there should be no discrimination between the several states in commercial regulations and rights of persons or property.

Passenger Cases, 7 How., 283, 407, 449, 492.
Crandall v. *Nevada,* 6 Wall., 35, 43, 48.
Woodruff v. *Parham,* 8 Wall., 123, 140, 147
Hinson v. *Lott,* 8 Wall., 148, 152.

VII.

This court has repeatedly denied to the states the right of discrimination in the exercise of their sovereign power of taxation.

Ward v. *Maryland,* 12 Wall., 418, 430, 431.
Welton v. *State of Missouri,* 91 U. S., 275.
Tiernan v. *Rinker,* 102 U. S., 123.
Webber v. *Virginia,* 103 U. S., 344.
Walling v. *Michigan,* 116 U. S., 466.

VIII.

Corporations are not "citizens" within Article IV, Section 2, and the Fourteenth Amendment of the Constitution.

Blake v. *McCluny,* 172 U. S., 239, 259.
Orient Ins. Co. v. *Daggs,* 172 U. S., 557, 561.

IX.

Corporations are "persons" within the Fourteenth Amendment.

Pembina Mining Co. v. *Pennsylvania,* 125 U. S., 181, 189.

Home Ins. Co. v. *New York,* 134 U. S., 594. 606.

Charlotte, etc., R. R. Co. v. *Gibbes,* 142 U. S., 386, 391.

Covington, etc. Turnpike Co. v. *Sandford,* 164 U. S., 578, 592.

Gulf, etc., R. Co. v. *Ellis,* 165 U. S., 150, 154.

Smyth v. *Ames,* 169 U. S., 466, 522.

The right of a state to prescribe the terms and conditions upon which foreign corporations may transact business within its borders or to exclude such corporations altogether, is conceded subject to the limitation that unconstitutional requirements cannot be made.

The case at bar is to be distinguished from the general principle, however, in that the State of Illinois has not attempted through any agency to prescribe conditions upon which a foreign, religious or charitable corporation may succeed to property in Illinois.

Upon general proposition:

Ins. Co. v. *Morse,* 20 Wall., 445.

Doyle v. *Continental Ins. Co.,* 94 U. S., 535.

Barron v. *Burnside,* 121 U. S., 186.

Cable v. *United States Life Ins. Co.,* 191 U. S., 288, 306.

Dayton Coal & Iron Co. v. *Barton,* 183 U. S., 23, 24.

Security Mut. Life Ins. Co. v. *Prewitt,* 202 U. S., 246.

XI.

When the corporation or the property is within the jurisdiction of the state, it is entitled to the equal protection of the laws and different rates of taxation, either upon property or succession to property, cannot be applied as between foreign or domestic corporations.

Philadelphia Fire Assn. v. *New York,* 119 U. S., 110.

Erie Railway Co. v. *State,* 2 Vroom., 531, (S. C., 86 Am. Dec., 226, 236).

Barbier v. *Connolly,* 113 U. S., 27, 31.

Home Ins. Co. v. *New York,* 134 U. S., 594, 606.

Pembina Consolidated M. Co. v. *Pennsylvania,* 125 U. S., 181, 189.

New York v. *Roberts,* 171 U. S., 658, 663.

Blake v. *McClung,* 172 U. S., 239, 255.

Orient Ins. Co. v. *Daggs,* 172 U. S., 557, 566.

Yick Wo v. *Hopkins,* 118 U. S., 356, 369.

ARGUMENT.

The State of Illinois adopted the principle of the succession or legacy tax by act of its Legislature which went into effect on July 1, 1895. This act was entitled "An Act to tax gifts, legacies and inhertitances in certain cases, and to provide for the collection of the same". The first section of this act is as follows:

> "All property, real, personal and mixed, which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same while a resident of this state, or, if decedent was not a resident of this state at the time of his death, which property or any part thereof shall be within this state or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason of any person or body politic or corporate shall become beneficially entitled in possession or expectation to any property or income thereof, shall be and is subject to a tax at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of the state; and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. When the beneficial interests to any property or income therefrom

shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son or the husband of the daughter or any child or children adopted as such in conformity with the laws of the State of Illinois, or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock; in every case the rate of tax shall be one dollar on every hundred dollars of the clear market value of such property received by each person and at and after the same rate for every less amount, provided that any estate which may be valued at a less sum than twenty thousand dollars shall not be subject to any such duty or taxes; and the tax is to be levied in above cases only upon the excess of twenty thousand dollars received by each person. When the beneficial interests to any property or income therefrom shall pass to or for the use of any uncle, aunt, niece, nephew or any lineal descendant of the same, in every such case the rate of such tax shall be two dollars on every hundred dollars of the clear market value of such property received by each person on the excess of two thousand dollars so received by each person. In all other cases the rate shall be as follows: On each and every hundred dollars of the clear market value of all property and at the same rate for any less amount; on all estates of ten thousand dollars and less, three dollars; on all estates of over ten thousand dollars and not exceeding twenty thousand dollars, four dollars; on all estates over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars; and on all estates over fifty thousand dollars, six dollars: Provided, that an estate in the above case which may be valued at a less sum than five hundred dollars shall not be subject to any duty or tax."

By act approved May 10, 1901, the Legislature of Illinois passed an act entitled "An Act to amend an act entitled 'An Act to tax gifts, legacies and inheritances in certain cases and to provide for the collection of the same, approved June 15, 1895; in force July 1, 1895;' by adding thereto an additional and new section exempting certain grants, gifts and bequests therein named to be known as Section 2½" (Acts Illinois 1901, pp. 221-222, Chicago Legal News, Ed.) The section thus added is as follows:

> "When the beneficial interests of any property or income therefrom shall pass to or for the use of any hospital, religious, educational, Bible, missionary, tract, scientific, benevolent or charitable purpose, or to any trustee, bishop or minister of any church or religious denomination, held and used exclusively for the religious or educational or charitable uses and purposes of such church or religious denomination, institution or corporation, by grant, gift bequest or otherwise, the same shall not be subject to any such duty or tax, but this provision shall not apply to any corporation which has the right to make dividends or distribute profits or assets among its members."

It is the effect given by the Supreme Court of Illinois to this amendment that violates the rights claimed by the plaintiff in error under the Constitution of the United States. In our opinion, the result declared by the Supreme Court is not found in the language of the amendment, but on the contrary does violence to such language and to settled principles of statutory interpretation. We recognize fully the rule so often announced by the court that the decision of the highest court of a state, construing and applying a statute of the state, will be fol-

lowed in this court unless the rights of a party under the constitution of the United States are thereby violated. It is with no purpose of questioning this rule, but because the statute as interpreted becomes unconstitutional, that we briefly examine the purpose and terms of this amendment. By such process of elimination, we hope to clearly present the one question involved in this record.

As we have seen, the amendment of May 10, 1901, does not deal primarily with persons or corporations as owners or successors to property; it deals with the property itself and declares as to all property in the State of Illniois to which succession can be had through the death of its owner that

> "when the beneficial interests of any property or income therefrom shall pass to or for the use of any hospital, religious, educational, Bible, missionary, tract, scientific, benevolent or charitable purpose * * * the same shall not be subject to any such duty or tax, but this provision shall not apply to any corporation which has the right to make dividends or distribute profits or assets among its members."

It is conceded that the property in question passed for educational purposes only and that the corporation chosen by the testatrix to hold and administer the property does not have the right to make dividends or distribute profits or assets among its members. The facts, therefore, bring the case squarely within the exception made by the statute. It is contended, however, and was so held by the court below, that because the devisee is a foreign corporation that the statute has no application. The Legislature did not prescribe that the property

or income therefrom passing to or for the use of any hospital, religious, Bible, missionary or charitable purpose was to be exempt only when such charitable purpose was to be carried out and the money used within its borders—on the contrary, it declared that property or income passing for the use of *any* educational, Bible, missionary or charitable purpose should be exempt. The law makers doubtless had in mind those noble organizations like the American Bible Society, the Boards of Foreign Missions, and others which are engaged in carrying the gospel and civilization to heathen lands, and desired that property in this state, devised to such uses and purposes, should be free of the succession tax; it was intended to encourage such dispositions of property. While the church and state are to be kept separate under our form of government, yet we recognize everywhere by our legislation and judicial decisions that ours is a Christian state and nation. This is illustrated by our recognition of Sunday, exemption of property devoted to church, educational and benevolent purposes, our method of administering oaths and in many other ways. The court has sought to narrow and limit the well-known and praiseworthy purposes of the Act. Under the construction adopted, any succession of property to the use of any of the great Bible or missionary societies must be subject to the inheritance tax, unless a person residing in Illinois, or a corporation organized under its laws, is designated to take, hold and administer such educational, Bible, missionary or charitable trust. To make such a limitation requires the addition of words not found in the act

itself. Such construction, or rather addition, does violence to the words actually used—these words exempt *any* property passing to or for the use of any educational, Bible, missionary or scientific purpose; again, these words must be given their ordinary meanings, and the lawmakers must be presumed to have had in mind well-known historical facts and conditions; they must, therefore, have known that while there may be some need for the activities of Bible and missionary agencies in the great state of Illinois, there is greater need for them in less fortunate localities. If they had designed to exempt property only when dedicated to the use of these agencies in this state and for the benefit only of people of this state, they would have chosen apt words to express that intention, and would not have used general words inclusive of all educational, Bible and missionary uses.

There is yet another rule of statutory construction which is violated by the action of the court below, viz: where general words are followed by words of limitation or exception, such words form the only limitation or exception to such general words. Applying this rule, we find the general words above quoted and remarked upon, followed by the words,

> "but this provision shall not apply to any corporation which has the right to make dividends or distribute profits or assets among its members."

This has the effect of a proviso, and constitutes the only exception to the general language, permissible under the act, and compels the conclusion that the provision of exemption should have been held

to apply to all corporations taking property for the uses named, not having the right to make dividends or distribute profits or assets among its members.

The question of tax or freedom from tax under this decision is not to be determined by the use to which the property is devoted, and to be applied equally to all property upon succession devoted to the same use, but is to be measured by the question whether the taker of the title as trustee for administration is a citizen or person of Illinois or of some other state, and whether the charity or use is one subject to the visitation and control of the state. It makes no difference that the Legislature of Illinois has not in express words made this discrimination against persons of other states as takers of titles for the purposes of the act of May 10, 1901; the Supreme Court has so interpreted its purpose, and when a constitutional right forbidden to the state is asserted by its authority it matters not by what agency of the state the act is done, whether the legislative, executive or judicial. It is not supposed that this accepted principle of constitutional decision will be challenged by counsel for the State of Illinois. Some of the decisions supporting it are cited in the brief.

Of the amendment of May 10, 1901, above quoted, the Supreme Court of Illinois said (*In re* Estate of Fanny Speed, 216 Ill., 23, 25-26).

> "There is nothing in this amendatory act to indicate that it was the legislative intent that its provisions should apply to corporations created under the laws of a sister state. It is a universally accepted rule of construction that an act of the General Assembly of

> a state granting powers, privileges of immunities to corporations must be held to apply only to corporations created under the authority of that state over which such state has the power of visitation and control, unless the intent that the act shall apply to other than domestic corporations is plainly expressed in the terms of the act. (DosPassos on Inheritance Tax Law (2nd Ed.), Sec. 36; *People* v. *Western Seaman's Friend Society,* 87 Ill., 246; Baille's Estate, 38 N. E. Rep., 1007; *Humphrey* v. *State,* 70 *id.,* 957.)''

The act in question is not and does not purport to be an act granting powers, privileges or immunities to corporations. It is an act passed, as its title and its text declare, for the express purpose of exempting property, devoted by its transfer to certain purposes, from the succession tax. The interpretation put upon it by the court limiting the exemption of the law both as to the taker and the charitable use to the State of Illinois and prescribing a succession tax if the devisee or the charity are of another state, makes the issue a clearly defined one.

Much space is given in the opinion of the court below to a discussion and declaration of what an inheritance tax is. There has been no controversy as to the nature of an inheritance tax at any stage of this litigation. It always has been and is now conceded that ''inheritance or succession taxes are not laid on the property inherited or taken by devise or bequest, but on the right to inherit or to take such property. The right to take property in pursuance of the statute of descent or of the statute pertaining to wills is property, but only for the reason that the law-making body of the state has seen fit

to create the right so as to take by inheritance or by devise or bequest. No person or corporation can inherit property or take by devise or bequest except when authorized so to do by an act of the Legislature. Such may at any time be abrogated prospectively at the will of the Legislature; or, in the exercise of the same power in quality though lesser in degree, the law-making department of the state may modify, regulate or impose conditions on the right to succeed by inheritance or devise to property which was owned by a person who has died."

In our brief in the court below we cited and quoted at length from *Magoun* v. *Ill. Trust & Sav. Bank*, 170 U. S., 283, 288, and *United States* v. *Perkins*, 163 U. S., 625, 628, to the same effect. This is unimportant except for the purpose of eliminating an uncontroverted proposition.

While conceding to the fullest extent the principle stated, we wish to be understood as denying that it is competent under the Constituion of the United States for a state legislating upon the subject to discriminate as against persons of other states whether natural or artificial. In other words, our proposition is that it is not competent for the State of Illinois, whether by legislative act or Supreme Court decision, to require the citizen of Kentucky to pay six per cent. on the sale, gift or devise of land owned by such citizen in Illinois, while the citizen of Illinois who sells, gives or devises property of the same character and value is permitted to do so without cost; or, conversely, the state cannot declare that property conveyed, given or devised to a trustee or other person of Kentucky shall pay six

per cent. succession tax, while if the trustee is of Illinois there shall be no such tax; if this can be done, it is competent for the legislature in the exercise of its admittedly plenary power over the subject to enact that a person owning property in Illinois and desiring to part with the title thereto by conveyance, gift or devise shall be permitted to do so in favor of citizens of Illinois or corporations organized therein and doing business wholly within the state, without cost or expense on account of succession of title; while if and when the conveyance, gift or devise is to or in favor of citizens of any other state or corporations organized under the laws of any other state or doing business in such other state, then there should be paid a succession tax equal to the full cash value of the property so conveyed, given away or devised.

Manifestly, if the power exists to the extent of imposing a tax of six per centum upon the value of the property as a discrimination between persons of different states, it exists to the extent of making the tax the full value of the property or forbidding such conveyance, gift or devise altogether. If this principle is sustained, we may reasonably expect to see in the inheritance tax laws of the near future provisions making one tax upon kin of different degree residing in the state of administration or probate and a much higher tax as against the succession by kin of like degree who reside in other states.

It may be said that the court in the present case simply applied the principle of discrimination as against a corporation of another state. Neither the act nor the decision is so limited. The act exempts

from the succession tax when the beneficial interest of any property or income therefrom shall pass to or for the use of any hospital, religious, educational, bible, missionary, tract, scientific, benevolent or charitable purpose, or to any trustee, bishop or minister of any church or religious denomination held and used exclusively for the religious, educational or charitable uses and purposes of such church or religious denomination, institution or corporation, etc. This shows that the exemption is not limited to corporate takers or uses. The decision treats the act as a grant of privileges and immunities to corporations, thus ignoring the test of use found in the inquiry, "To what purpose is the beneficial interest in the property devoted?" and the consideration that there is no necessity for corporate agency in this connection; the result is the declaration noted above with reference to the power of state visitation and control as affording the test of taxability or non-taxability upon the right of succession.

The court was probably led into this error through failure to distinguish the difference between a general tax and a tax upon the right of succession through conveyance in contemplation of death, devise or inheritance.

This difference is believed to be fundamental and to have an important bearing upon the questions involved in this case. It is thought also that a brief statement of such difference will tend to further eliminate the uncontroverted questions discussed in the opinion of the court below and clearly define the one issue in the case. What are the rules of construction with reference to claimed exemptions from

(p. 27.)

special taxes as distinguished from such claims to exemption from a general tax? They are:

(a) All persons claiming exemptions from a general property tax must clearly show themselves entitled to such exemption; there are no presumptions in favor of such exemption.

(b) No person or property is liable to a special tax or impost unless clearly within the words of the statute imposing such tax or impost; words of exception are to be liberally and beneficially construed, on the principle that

> "the sovereign is bound to express its intention to tax in clear and unambiguous language, and that liberal construction be given to words of exception confining the operation of duty." (*Eidman* v. *Martinez*, 184 U. S., 578, 583.)

It remains to determine if this distinction finds support in reason and authority.

Every citizen and owner of property lives under the protection of the laws enacted and administered through those agencies provided by the terms of the constitution and laws made thereunder; he knows and must be held to know that these agencies, from the great organism designated the State, down to the lowest agent thereof exercising public authority, must be sustained at the collective expense, and hence the necessity of taxation. These funds are required to be raised by general laws and to fall upon all property and classes uniformly. The battle of freedom and civilization has been largely fought along this line. The struggle has been against special taxes and privileges, and for uniform impositions and burdens. It was for this end

that everywhere the people in their struggle with despotism or entrenched power have sought to establish the right of the commons as their representatives to hold the purse and originate all revenue measures. In so far as they have accomplished these ends under any form of government may they be said to have progressed towards freedom, and in so far as they have fallen short are they yet in thraldom.

It follows when any person living in society and owning property sets up the claim that he personally, or his property, is exempt from these general and common burdens, that he should be required to establish his contention in the clearest and most satisfactory manner—he should be required to point to some language used by the law making power so clear and explicit as to be incapable of any other interpretation; for it offends against natural justice that one should enjoy the blessings of organized society and be exempt from its necessary burdens. Such a person is a mere parasite upon the body politic.

On the other hand, when organized society in its capacity of state sets up the claim as against an individual that he or his property or his right to succeed to property is subject to some tax or charge not applicable to other citizens, or to other property, such individual has the right, and it is his duty to demand by what right he or his property, or his enjoyment thereof, is thus singled out and made subject to burdens not falling upon other units of the State. This right and duty has been a part of our inheritance at least since Hampden's time. The

State must be able, under such circumstances, to point to language so clear and explicit as to warrant no other interrpetation requiring the payment of the special tax, and must further show that it has the constitutional power to use and enact the language. All the presumptions are against it. History, which is only recorded experience, and reason alike justify the distinction here made.

It has, of course, found expression in judicial opinion. Thus, in *Eidman* v. *Martinez,* 184 U. S., 578, 583, this court, speaking by Mr. Justice Brown, said:

> "It is an old and familiar rule of the English courts, applicable to all forms of taxation, and particularly special taxes, that the sovereign is bound to express its intention to tax in clear and unambiguous language, and that a liberal construction be given to words of *exception* confining the operation of duty. *Warrington* v. *Furbor,* 8 East, 242, 247; *Williams* v. *Sangar,* 10 East, 66, 69; *Denn* v. *Diamond,* 4 B. & C., 243, 245; *Tomkins* v. *Ashby,* 6 B. & C., 541; *Doe* v. *Snaith,* 8 Bing., 146, 152; *Wroughton* v. *Turtle,* 11 M. & W., 561, 567; *Gurr* v. *Scudds,* 11 Exchq., 190, though the rule regarding *exemptions* from general laws imposing taxes may be different. Cooley on Taxation, 146; *In Matter of Enston,* 113 N. Y., 174, 177.
>
> We have ourselves had repeated occasion to hold that the customs revenue laws should be liberally interpreted in favor of the importer, and that the intent of congress to impose or increase a tax upon imports should be expressed in clear and unambiguous language. *Hartranft* v. *Wiegmann* 121 U. S., 609; *American Net & Twine Co.* v. *Worthington,* 141 U. S., 468; *United States* v. *Wigglesworth,* 2 Story, 369; *Powers* v. *Barney,* 5 Blatchford, 202."

The court, in discussing the English cases, shows that under the act imposing a tax on every legacy "given by any will or testamentary instrument to any person who shall die after the passage of this act," it is now settled by the decisions of the House of Lords in *The Attorney General* v. *Jackson,* 8 Bligh. (N. S.), 15, and *Thompson* v. *Advocate General,* 12 Cl. & Fin., 1, that assets of a testator domiciled abroad, though administered in England, are not subject to such tax.

An attempt was then made to raise a distinction between a legacy tax and a succession duty, which came into operation by the act of May 19, 1853. Mr. Justice Brown says of this (pp. 585, 586):

> "In *Wallace* v. *Attorney General,* L. R., 1 Ch. App., 1, it was held that a succession duty was not payable on legacies given by the will of a person domiciled in a foreign country. The law was treated as settled by *Thompson* v. *Advocate General,* 12 Cl. & F., 1, and the question discussed on principle in a vigorous opinion. The converse of this case is that of *Attorney General* v. *Napier,* 6 Exch., 217, in which a British born subject died in India, though he had never acquired a domicil there, and it was held that the whole of his property, though chiefly situate abroad, was liable to a legacy duty. This case is similar to that of *Ewin,* 1 Cr. & Jr., 151, above cited, though decided twenty years later. See also *Attorney General* v. *Campbell,* L. R., 5 H. L., Eng. & Irish Apps., 524; *Lyall* v. *Lyall,* L. R., 15 Eq., 1.
>
> From this analysis of the English cases it clearly appears that, under a general act imposing a duty upon legacies, the law of the domicil of the testator controls, and if he be domiciled abroad, whether an alien or a British subject, his legacies are exempt, whether the

> property be in England at the time of his death, or be subsequently remitted there by his executors for local administration and distribution."

The court then proceeds to examine the various decisions of the state courts upon this subject and shows that the tendency has been to impose the succession tax upon all property passing under the laws of the state, and says (p. 589):

> "The tax in question in this case not being upon the property itself, but upon the succession, *United States* v. *Perkins*, 163 U. S., 625; *Magoun* v. *Illinois Trust & Savings Co.*, 170 U. S., 283; *Knowlton* v. *Moore*, 178 U. S., 41, laws imposing general taxes upon real and personal property are not controlling when applied to taxes upon the succession, when such succession takes place and is governed by the laws of a foreign country. The actual *situs* of the property in such cases cuts but a small figure, while in the case of general taxes upon such property it is now considered determinative of the whole question."

Confining ourselves, however, to judicial declarations of the principles of construction for which we contend, we ask the court's attention to the following from the decision *In re Enston*, 113 N. Y., 174, 177:

> "The tax imposed by this act is not a common burden upon all the property, or upon the People within the State. It is not a general, but a special tax reaching only to special cases, and affecting only a special class of persons. The executors in this case do not, therefore, in any proper sense, claim exemption from a general tax or a common burden. Their claim is that there is no law which imposes such a tax upon the property in their hands as executors. If they were seeking to escape from general taxa-

tion, or to be exempted from a common burden imposed upon the People of the State generally, then the authorities cited by the learned counsel for the People, to the effect that an exemption thus claimed must be clearly made out, would be applicable. But the executors come into court claiming that the special taxation provided for in the law of 1885 is not applicable to them, or the property which they represent. In such a case they have the right both in reason and in justice, to claim that they shall be clearly brought within the terms of the law before they shall be subjected to its burdens. It is a well established rule that a citizen can not be subjected to special burdens without the clear warrant of the law. The following authorities furnish the true rule applicable to such a case: Cooley on Taxation, 2nd Ed., 275; *U. S.* v. *Wigglesworth*, 2 Story, 373; *Powers* v. *Barney*, 5 Blatchf., 203; *U. S.* v. *Watts*, 1 Bond., 583; *Doe* v. *Snaith*, 8 Bing., 152; *Green* v. *Howay*, 101 Mass., 248."

And the following from *In re Swift's Estate*, 137 N. Y., 77, 87:

> "As a law imposing a special tax, it is to be strictly construed against the state, and a case must be clearly made out for its application."

This was in reference to the collateral inheritance law of 1887.

In *Gurr* v. *Scudds*, 11 Exch., 190, a stamp act imposing stamps on certain sales of goods had certain exemptions embodied in it. Pollock., B., said:

> "If there is any doubt as to the meaning of the stamp act it ought to be construed in favor of the subject, because a tax can not be imposed without clear and express words for that purpose."

In *U. S.* v. *Wigglesworth,* 2 Story, 369, various acts of congress which imposed imposts on indigo were passed in such terms that it seemed a doubtful question whether the indigo imported by the defendant did not fall within an express exemption. The act of 1832 made indigo subject to tax, but an act of 1833 made it free from duty after 1842. An act of 1841 then laid a tax of 30 per cent. on all articles then taxable except indigo, etc., which shall pay the rate due under existing laws. It was held that the defendant was not liable, on the ground that a special tax on a certain article is most strongly construed against the government.

In *U. S.* v. *Watts,* 1 Bond, 580, a tax was imposed on goods, etc., of a decedent in the hands of the executor, left by will to legatees. The government attempted to tax money arising out of the sale of real property, on the ground that it was converted into personal property. It was held not taxable under the rule of strict construction against the government.

In *Fox* v. *Commonwealth,* 16 Grattan, 1, the question was whether a statute imposing a collateral inheritance tax was repealed by implication by a later statute. Among the considerations which moved the court to hold that it was repealed was the fact that an act of this kind was not to be enforced in favor of the government unless it was clearly shown to have been imposed on the particular person claiming exemption.

In *Mager* v. *Grima,* 8 How., 490, 493, Mr. Chief Justice Taney, speaking with reference to a Louisiana statute imposing a tax of ten per cent, upon an inheritance or succession passing to an alien, said:

"Now the law in question is nothing more than an exercise of the power which every State and sovereignty possesses, of regulating the manner and term upon which property, real or personal, within its dominion may be transmitted by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it. Every State or nation may unquestionably refuse to allow an alien to take either real or personal property situated within its limits, either as heir or legatee, and may, if it thinks proper, direct that property so descending or bequeathed shall belong to the State. In many of the States of this Union at this day real property devised to an alien is liable to escheat. And if a State may deny the privilege altogether, it follows that when it grants it, it may annex to the grant any condition which it supposes to be required by its interests or policy. This has been done by Louisiana. The right to take is given to the alien, subject to a deduction of ten per cent. for the use of the State.

In some of the States laws have been passed at different times imposing a tax similar to the one now in question upon its own citizens as well as foreigners, and the constitutionality of these laws has never been questioned. And if a State may impose it upon its own citizens, it will hardly be contended that aliens are entitled to exemption; and that their property in our own country is not liable to the same burdens that may lawfully be imposed upon that of our own citizens.

We can see no objection to such a tax, whether imposed on citizens and aliens alike, or upon the latter exclusively."

And it was likewise held in *United States* v. *Fox*, 94 U. S., 315, the court, speaking by Mr. Justice Field:

> "The several states of the Union possess the power to regulate the tenure of real property within their respective limits, the modes of its acquisition and transfer, the rules of its descent and the extent to which a testamentary disposition of it may be exercised by its owners."

These broad declarations as to the power of the several states to regulate and limit the succession to property within their respective jurisdictions, were intended to apply to the facts of the particular cases decided and to state general propositions of law.

They are not as we submit authority for the proposition that in the exercise of this conceded power of limiting or forbidding succession upon the death of the owner, one rule can be adopted in favor of persons residing in other states and a more favorable one for persons residing in the State where the property is situated.

The Constitution of the United States has many clauses intended to prevent discrimination by any State in favor of its own citizens and against the citizens of other States. It was not intended by the framers of that instrument that the several States should have the power to enter upon any such war of discrimination with reference to any of the great questions involving the life, liberty or property of the individual citizen, or again with reference to the raising of income to maintain the independent state government. The conditions which made manifest the weakness of the confederation and threatened ruin to the people of the several States, made necessary the creation of a nation. In any event, the

framers of the constitution attempted to lay the foundation of a national life, and through the decisions of this court and the logic of events we now see that their attempt to reconcile conflicting States and a natural jealousy of centralized power has resulted as they hoped. This general principle of equality of right as between citizens of the several States in all matters of commerce and taxation has been repeatedly recognized in this court, sometimes by language pointing to the act of a State as an infraction of some specified clause of the constitution; at other times declaring the power exercised by the State to be inconsistent with the character of the national government, and the ends to which it was founded. It is our contention that the present law of Illinois, as construed by the Supreme Court of that State, is within both these objections, in so far as it applies to citizens or persons of other states.

In the Passenger Cases, 7 How., 283, the conclusion of the majority of the court was based upon the theory that the tax levied by the States of New York and Massachusetts upon the masters of vessels engaged in foreign commerce, requiring the payment of a certain sum on account of every passenger brought from a foreign country was inconsistent with the national power of our government. While the court recognized to the fullest extent the sovereign power of the States over the subject of taxation, it was clearly declared that this power was limited to the extent that it must be consistent with the purposes to which the Union was established and not interfere with any of the powers delegated to

the United States. For example, Mr. Justice McLean said, p. 407:

> "If this power to tax passengers from a foreign country belongs to a State, a tax, on the same principle, may be imposed on all persons coming into or passing through it from any other State of the Union. And the New York statute does in fact lay a tax on passengers on board of any coasting vessel which arrives at the port of New York with an exception of passengers in vessels from New Jersey, Connecticut and Rhode Island, who are required to pay for one trip in each month. All other passengers pay the tax every trip.
>
> If this may be done in New York, every other State may do the same, on all the lines of our internal navigation. Passengers on a steamboat which plies on the Ohio, the Mississippi, or on any of our other rivers, or on the lakes, may be required to pay a tax, imposed at the discretion of each state within which the boat shall touch. And the same principle will sustain a right in every State to tax all persons who shall pass through its territory on railroad cars, canal boats, stages, or in any other manner. This would enable a State to establish and enforce a non-intercourse with every other State."

Mr. Justice Catron's opinion expresses a similar thought at page 449, as does that of Mr. Justice Grier at page 462. The dissenting opinion of Mr. Chief Justice Taney was more emphatic than any of the opinions of the majority, that the end and purpose of the Union was found in the equality of the citizens of the several states throughout the entire United States. He said, page 492:

> "In speaking of the taxing power in this case, I must, however, be understood as speaking of

it as it is presented in the record; that is, to say, as the case of passengers from a foreign port. The provisions contained in that law relating to American citizens who are passengers from the ports of other States is a different question, and involves very different considerations. It is not now before us; yet, in order to avoid misunderstanding, it is proper to say that, in my opinion, it cannot be maintained. Living, as we do, under a common government, charged with the great concerns of the whole Union, every citizen of the United States, from the most remote States or Territories, is entitled to free access, not only to the principal departments established at Washington, but also to its judicial tribunals and public offices in every State and territory of the Union. And the various provisions in the Constitution of the United States—such, for example, as a right to sue in a federal court sitting in another State, the right to pursue and reclaim one who has escaped from service, the equal privileges and immunities secured to citizens of other States, and the provision that vessels bound to or from one State to another shall not be obliged to enter and clear, or pay duties—all prove that it intended to secure the freest intercourse between the citizens of the different States. For all the great purposes for which the federal government was formed, we are one people, with one common country. We are all citizens of the United State; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States. And a tax imposed by a State for entering its territories or harbors is inconsistent with the rights which belong to the citizens of other States as members of the Union, and with the objects which that Union was intended to attain. Such a power in the States could produce nothing but discord and mutual irritation, and they very clearly do not possess it."

In *Crandall* v. *Nevada*, 6 Wall., 35, 48, this view receives the approval of this court. The language of the Chief Justice in the Passenger Cases quoted above is repeated and adopted by the court in connection with the significant declaration:

> "In all these cases the opponents of the taxes levied by the States were able to place their opposition on no express provision of the constitution, except in that of *Brown* v. *Maryland*. But in all the other cases, and in that case also, the court distinctly placed the invalidity of the State taxes on the ground that they interfered with an authority or the federal government, which was itself only to be sustained as necessary and proper to the exercise of some other power expressly granted."

The constitutionality of the statute of Alabama, imposing a tax upon all sales made therein, was sustained in *Woodruff* v. *Parham*, 8 Wall., 123, solely because the tax was uniform and fell equally upon the citizens of that state and of other states doing business therein—that the law would have been held void had there been any attempt to discriminate as between the citizens of the different states, is made manifest by the following language of Mr. Justice Miller, page 140:

> "The case before us is a simple tax on sales of merchandise, imposed alike on all sales made in Mobile, whether the sales be made by a citizen of Alabama or of another State, and whether the goods sold are the produce of that State or some other. There is no attempt to discriminate injuriously against the products of other States or the rights of their citizens, and the case is not, therefore, an attempt to fetter commerce among the States, or to deprive the citizens of other States of any privilege or im-

munity possessed by citizens of Alabama. But a law having such operation would, in our opinion, be an infringement of the provisions of the constitution which relate to those subjects, and therefore void."

Mr. Justice Nelson, in his dissenting opinion, goes into the subject historically, and shows that the idea of equality of right with reference to the subject of taxation as between the citizens of the several States was a fundamental one with the framers of the constitution. He quotes Mr. Justice Story as follows, page 147:

"So it seems that a struggle for State powers was constantly maintained, with zeal and pertinacity, throughout the whole discussion. If there is wisdom and sound policy in restraining the United States (referring to the prohibition upon it in respect to articles exported from the State) from exercising the power of taxation unequally in the States, there is, he observes, at least equal wisdom and policy in restraining the States themselves from the exercise of the same power injuriously to the interests of each other. A petty warfare of regulation is thus prevented which would rouse resentments and create dissension to the ruin of the amity of the States. The power to enforce their inspection laws is still retained, subject to the revision and control of Congress. So that sufficient provision is made for the convenient arrangement of the domestic and internal trade whenever it is not injurious to the general interests."

In the case of *Hinson* v. *Lott*, 8 Wall., 148, decided at the same time with *Woodruff* v. *Parham*, Mr. Justice Miller speaking for the court, said, page 152:

> "The tax in the case before us, if it were of the character we have suggested, discriminating adversely to the products of all the other States in favor of those of Alabama, and involving a principle which might lead to actual commercial non-intercourse, would, in our opinion, belong to that class of legislation and be forbidden by the clause of the Constitution just mentioned."

The decisions in *Ward* v. *Maryland*, 12 Wall., 418, 430, 431; *Welton* v. *State of Missouri*, 91 U. S., 275; *Tiernan* v. *Rinker*, 102 U. S., 123; *Webber* v. *Virginia*, 103 U. S., 344; *Walling* v. *Michigan*, 116 U. S., 446, and other cases of similar import further illustrate the consistent and emphatic denial by this court of all right on the part of the States to discriminate against citizens of or property from other States in the exercise of their sovereign power of taxation or of the equally high police power as affecting commerce between the States.

The origin of the United States, and the consistent policy as shown by its legislation and judicial decisions, all forbid the idea of discrimination by one State as against the citizens, persons or property interests of the others.

It remains to inquire whether there is any express language in the constitution, unconnected with the commerce clause, prohibiting such discrimination, and to what extent.

By Act 4, Sec. 2, and the fourteenth amendment to the constitution, it is made clear that the citizens of each State are entitled to all privileges and immunities of citizens of the several States, and that no State can make or enforce any law which shall

abridge the privileges or immunities of citizens of the United States. These provisions require no extended discussion as applied to this case. Under them the citizen of Kentucky has the same right to own, use and dispose of property located in Illinois as has any citizen of Illinois. It is clear that it would not be competent for Illinois to enact that upon the sale of any property within her borders owned by a citizen of any State other than Illinois, or upon the devolution of the title to any such property so owned, by the death of such owner, and succession thereto through intestacy or devise, a tax of six or some other per cent should be collected, while upon the sale or devolution of title to property owned by citizens no tax or charge should be made. Such a provision would as clearly violate the clauses above named, guaranteeing equality of privilege and immunity as did the charge per head of passengers landed from any foreign country, or transported from the state, violate the commerce clause of the constitution. In fact, it may well be doubted if there would be any such dissent in this court as has marked the construction of the law upon the relative powers of the national and State governments under the commerce clause of the constitution. The same arguments as have been used in the discussion of the commerce clause growing out of the conditions existing prior to the formation of the constitution, and leading to the necessity of a national life of so broad a character as to do away with State jealousies and discriminations, apply equally to the subject under discussion. It is no more important that the citizen of one State

should have free access and egress to and from the several States, or be equally taxed, than that he should have an equal right to sell or devise property owned by him.

It remains to consider the question from that of the recipient of the property, in this case, the Board of Education, a corporation of Kentucky. It is useless to cite authorities to sustain the proposition that corporations are not *citizens* within these provisions of the constitution. No well-informed lawyer would contend to the contrary. It is settled, however, that such corporations are *persons* within the meaning of the fourteenth amendment.

To the application of the Fourteenth Amendment to the case at bar the Supreme Court of Illinois interposes two objections:

First. That the Board of Education is not a person within the jurisdiction of Illinois, as required by that amendment.

Second. That any State is authorized to exclude from its borders any corporation organized under the laws of another state, or may impose such conditions for the admission of foreign corporations within the limits of its jurisdiction as its law-making body may consider requisite for the protection of its interests and policies.

If the Board of Education is within the jurisdiction of Illinois, we understand that it follows that it is a person, and entitled to the equal protection of the laws of the State; in other words, it is not competent for Illinois to tax the property of corporations organized under its laws at one rate, and

the property of corporations organized under the laws of a sister State, and devoted to the same purpose, at another rate; to provide that the taking of property owned by a domestic corporation shall be larceny, while a like taking of the property of a foreign corporation shall be regarded as a public benefit, and the taker rewarded by bounty.

The court below assigned the following reasons for holding that the Board of Education was not within the jurisdiction of Illinois (216 Ill., page 30):

> "Foreign corporations are not 'within the jurisdiction' of a State other than that which created them, within the meaning of those words as employed in Section 1 of the fourteenth amendment, until they have fulfilled the conditions authorizing their admission into such State. (*Blake* v. *McClung*, 172 U. S., 239.) The State of Illinois has adopted certain requirements to be complied with by foreign corporations *organized for pecuniary profit* who desire to transact business within the limits of this State, but we are not aware that authority has been granted by any enactment of the State authorizing a corporation organized, as is the appellant Board, by a foreign State, to accumulate funds or income to be used for educational and religious purposes in the State in which such foreign corporation was created, to exercise its chartered powers in this State. The stipulated facts show the appellant Board has never engaged in this State in the educational or religious work it was chartered to promote and advance; that it does not maintain and never had an office in this State, and that, in fact, it has no power to devote funds which it may receive to educational and religious purposes beyond the bounds of the limits of the State of Kentucky. It is not a 'citizen' of the

> United States and not a person 'within the jurisdiction of the State' of Illinois, and hence cannot invoke the benefit and protection of the provisions of the Federal Constitution here under consideration."

These requirements prescribing conditions upon which *corporations organized for pecuniary profit* can *transact business* in Illinois have no application to corporations not organized for pecuniary profit, and which succeed to title to property in this state. There is no law of Illinois prescribing any conditions of limitations upon such ownership or the transaction of business by corporations not organized for pecuniary profit. Such corporations can do any act in Illinois within the terms of their charter.

Thus, in *Santa Clara Female Academy* v. *Sullivan*, 116 Ill., 375, the court said (we quote from the syllabus):

> "The general laws of this State, for many years prior to 1874, and since, have expressly empowered corporations for educational purposes to take and hold real estate by grant and devise, without limit as to quantity and value.
>
> There is in the law of this State no discrimination against foreign corporations, but they are placed on the same footing with our own domestic corporations, and are given, by implication, equal powers with domestic ones of like character. Our law places them under the same restrictions as ours are, but this has no reference to the manner of their coming into existence or the mode of their organization.
>
> So a corporation organized under the laws of another State purely for educational purposes, having the capacity, under its charter or the laws of its State, to acquire, hold and convey

real and personal property, may take and hold real estate in this State, by devise, to the extent of its capacity in the State of its creation.

The cases of *Carroll* v. *East St. Louis*, 67 Ill., 568; *Starkweather* v. *American Bible Society*, 72 *id.*, 50, and *United States Trust Co.* v. *Lee*, 73 *id.*, 142, in respect to what was actually decided by them, do not conflict with the ruling in this case. The remarks in the first of those cases, which may be inconsistent with the rule here announced, not being necessary to the decision therein made, are to be regarded as *obiter dicta.*"

To the same effect is *Christian Union* v. *Yount*, 101 U. S., 352, a case arising in Illinois and involving the rights of a benevolent or charitable foreign corporation in that State. As there is no law pointing out any act necessary for a charitable corporation to do to bring itself within the jurisdiction of the State, and as it has a legal right to take property by devise equal to that of a domestic corporation, it is difficult to see what the court below can mean in asserting that such a corporation is not within the jurisdiction of the State until it has "fulfilled the conditions authorizing their (its) admission into such State," or what pertinency can be predicated of the statement, "The State of Illinois has adopted certain requirements to be complied with by foreign corporations organized for pecuniary profit who desire to transact business within the limits of this State," etc.

It is well settled that the Board of Education is within the jurisdiction of the State of Illinois. It has come to this State to take title to property here situated, and probated the will of Mrs. Speed as evi-

dence of such title. The State has recognized its presence in the State by proceedings against it to impose this large tax upon its succession to such property. It has appeared to resist such imposition in all the courts of the State, commencing with the State appraiser, then the County Court, and finally the Supreme Court. Plainly thereby it came within the jurisdiction of the State. In *Christian Union* v. *Yount*, 101 U. S., 352, 356, this court, by Mr. Justice Harlan, said:

> "Although, as a general proposition, a corporation must dwell in the State under whose laws it was created, its existence as an artificial person may be acknowledged and recognized in other States. Its residence in one State creates no insuperable objection to its power of contracting in another." *Runyan* v. *The Lessee of Coster* 14 Pet., 122. In *Cowell* v. *Springs Company* (100 U. S., 55) we said: "If the policy of State or Territory does not permit the business of the foreign corporation in its limits or allow the corporation to acquire or hold real property it must be expressed in some affirmative way; it cannot be inferred from the fact that its legislature has made no provision for the formation of similar corporations, or allow corporations to be formed only by general law. Telegraph companies did business in several States before their legislatures had created or authorized the creation of similar corporations; and numerous corporations existing by special charter in one State are now engaged, without question, in business in States where the creation of corporations by special enactment is forbidden." In harmony with the general law of comity obtaining among the States composing the Union, the presumption should be indulged that a corporation of one State, not forbidden by the law of its being, may exercise within any

other State the general powers conferred by its own charter, unless it is prohibited from so doing, either in the direct enactments of the latter State or by its public policy to be deduced from the general course of legislation, or from the settled adjudications of its highest court."

In *Santa Clara Female Academy* v. *Sullivan*, 116 Ill., 375, the court held:

"It is provided in Section 26 of Chapter 32 (Rev. Stat. 1874, p. 290), that 'foreign corporations doing business in this State,' shall have no other or greater powers than corporations of like character organized under the general laws of the State, thereby impliedly granting to such foreign corporations the same privileges enjoyed by domestic corporations. The restriction to 'foreign corporations doing business in this State,' is not to be understood as necessarily excluding such foreign corporations as may carry on the special business for which they were organized, exclusively in another State, but receiving lands in this State by devise, and the assertion in the State of ownership over them, will be a sufficient 'doing of business in this State' within the purview of the statute."

In *Pennsylvania Co. for Ins., etc.*, v. *Bauerle*, 143 Ill., 459, 471, the court said of the devise to a foreign corporation:

"So here, receiving the land adjoining Chicago by devise, with power to sell and dispose of the same, and with power to lease it and to collect the rents and profits therefrom, and the assertion in this State of the ownership of said land, and assuming to sell and convey it, and bringing suits in the courts of this State in respect to said land and such alleged ownership, and for the enforcement of contracts in regard to the same, must be held to be doing business in this State, within the purview of said section."

The imposition of the tax upon the succession embraces as a necessary concept the idea of the presence within the jurisdiction of the State of the person taking the succession. The tax is not one on the property, but on the succession. The succession must necessarily bring the owner within the jurisdiction of the State for its purpose and uses, and hence as an object of the taxing power; and hence within the requirement of the equal protection of the laws.

In the Passenger Cases, 7 How., 283, 422, Mr. Justice WAYNE said:

> "The right in a nation or State occurs—not in all cases, for there are international exceptions—upon all persons and things when they come or are brought within the territory of a State. Not, however, because the person or thing is within the territory, but because they are under the sovereignty or political jurisdiction of the State. If not within the latter, the right to tax does not arise until that event occurs. States may have territorial jurisdiction for most of the purposes of sovereignty, without political jurisdiction for some of them."

This principle is thus stated in Professor McGehee's Due Process of Law, p. 218:

> "The principles of public law limit the power of a State in imposing taxes, whatever be the form which the tax may assume, to persons, property, and business within the jurisdiction of the State; and a disregard of this rule is a denial of due process of law to the owners of property upon which a tax is levied and which is not within the jurisdiction. (*Dewey* v. *Des-Moines*, 173 U. S., 193; *Louisville, etc. Ferry Co.* v. *Kentucky*, 188 U. S., 385; *Delaware, etc. R. Co.* v. *Pennsylvania*, 198 U. S., 341; *Union Re-*

frigerator Transit Co. v *Kentucky*, 199 U. S., 194.)"

In *Dewey* v. *DesMoines*, 173 U. S., 193, 204, the court said:

> "The power to tax is, however, limited to persons, property and business within the State and it cannot reach the person of a non-resident. (State Tax on Foreign-held Bonds, 15 Wall., 300, 319.) In Cooley on Taxation, 1st Ed., p. 121, it is said that 'a State can no more subject to its power a single person or a single article of property whose residence or legal situs is in another State, than it can subject all the citizens or all the property of such other State to its power.' These are elementary propositions."

In *Louisville & Jeffersonville Ferry Co.* v. *Kentucky*, 188 U. S., 385, 396, the court said:

> "While the mode, form and extent of taxation are, speaking generally, limited only by the wisdom of the Legislature, that power is limited by a principle inhering in the very nature of constitutional Government, namely, that the taxation imposed must have relation to a subject within the jurisdiction of the taxing Government. Hence, this court, speaking by Chief Justice MARSHALL, in *McCulloch* v. *Maryland*, 4 Wheat., 316, 429, said that, while all subjects over which the sovereign power of a State extends are objects of taxation, 'Those over which it does not extend, are, upon the soundest principles, exempt from taxation.' That proposition, he said, could almost be pronounced self-evident."

In *Union Transit Company* v. *Kentucky*, 199 U. S., 194, 204, the court said:

> "It is also essential to the validity of a tax that the property shall be within the territorial

> jurisdiction of the taxing power. Not only is the operation of State laws limited to persons and property within the boundaries of the State, but property which is wholly and exclusively within the jurisdiction of another State, receives none of the protection for which the tax is supposed to be the compensation. This rule receives its most familiar illustration in the cases of land which, to be taxable, must be within the limits of the State. Indeed, we know of no case where a legislature has assumed to impose a tax upon land within the jurisdiction of another State, much less where such action has been defended by any court. It is said by this court in the foreign-held Bond case, 15 Wall., 300, 319, that no adjudication should be necessary to establish so obvious a proposition as that property lying beyond the jurisdiction of a State is not a subject upon which her taxing power can be legitimately exercised."

Concededly, the succession tax is not a tax upon property but upon the succession to property. If the right to tax is asserted, the presence within the jurisdiction of the person succeeding or the right is necessarily asserted.

It is submitted that these considerations demonstrate that the Board of Education was a person within the jurisdiction of the State of Illinois and entitled to the equal protection of its laws, and render entirely inapplicable the decisions holding that where the state statute prescribes acts to be done by a foreign corporation as prerequisite to doing business in such State, it is not within the jurisdiction of the State until it complies with such conditions.

It remains to consider whether the equal protection of the laws allows a State to impose one rate

of taxation upon the property or succession to property of persons residing therein and another rate upon persons of other States. It is to be remembered that the word "persons" in this clause embraces citizens and corporations.

In *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S., 283, 292, Mr. Justice McKenna, speaking for the court, said:

> "The power of the States over successions may be as plenary in the abstract as appellee contends for, nevertheless it must be exerted within the limitations of that constitution. If the power of devise or of inheritance be a privilege, it must be conferred or regulated by equal laws."

It is not contended that the fourteenth amendment requires the States to adopt any rule of equal taxation as applied to its own citizens or persons transacting business therein. Our contention is limited to the claim that the line of classification cannot be based on State lines, *i. e.* the question of State citizenship or State organization as applied to corporations. Uniformity of taxation is a question of State constitution or laws, unless discriminations are made based upon ownership by persons of different States, when it at once becomes a federal question. The purpose to discriminate for such reasons must be evident and the necessary result of the legislation or decision. The fact that in the workings of the law some inequality may arise is not enough; it must appear that there was an intention to discriminate against the citizens or persons of other States, precisely what the Supreme Court of Illinois declares was the purpose of the

law making power in enacting the law of May 10, 1901. We make these limitations to avoid the necessity of discussing questions well settled and not pertinent to the question here involved.

Second, the Supreme Court of Illinois states that because the State of Illinois has the right to prescribe the terms and conditions upon which foreign corporations may transact business within its borders, the tax imposed in the present case is valid. We concede the power of the State to prescribe the terms and conditions upon which a foreign corporation may enter its borders. This court has often so declared and added that it is likewise competent for the State to forbid such corporations from transacting business therein. This, however, throws no light upon the question and by no means justifies the conclusion deduced therefrom by the Supreme Court of Illinois.

The State of Illinois has not attempted to prescribe the conditions under which a corporation organized in another State for charitable or religious purposes may transact business in such State in connection with the purposes of its organization. As we have seen, the decisions in the Supreme Court of the State, as well as in this court, establish the unrestricted right of such corporations to take and hold property in the State. Having the right by the laws of Kentucky to hold real estate, in that State or elsewhere, the right likewise is established by the public policy of Illinois.

The question then is, are these rights subject to the equal protection of the laws, it being conceded

that like corporations in Illinois are not required to pay succession taxes upon property held to such uses?

The fallacy of the court's position lies in the failure to recognize the principle that constitutional rights cannot be denied by the State, or withheld in any way, by contract or otherwise. If the Board of Education is rightly in Illinois, then it is equal before its laws. It could not have been required to waive any of its constitutional rights, even if the State had demanded such waiver, as it has not. It would have been within the rule of *Insurance Co.* v. *Morse*, 20 Wall., 445, and succeeding cases holding that such a right could not be bartered away, and that no provision in a State law is effective to prevent the removal of a cause to the Federal court if the case falls within the terms of the Federal statute providing for removal of causes. It is competent for the State to require the foreign corporation to cease doing business in the State if it does so remove causes. This is the result of the case cited, and *Doyle* v. *Continental Insurance Co.*, 94 U. S., 535; *Barron* v. *Burnside*, 121 U. S., 186; *Cable* v. *United States Life Ins. Co.*, 191 U. S., 288, 306; *Dayton Coal & Iron Co.* v. *Benton*, 183 U. S., 23, 25; *Security Mutual Life Insurance Co.* v. *Prewitt*, 202 U. S., 246. These cases are authority for the true rule applicable to the case at bar, which may be stated as follows:

A State has no right in dealing with a foreign corporation with respect to transacting business within its limits, or in taxing its property owned therein or its succession to any property, to deny to such

corporation the equal protection of its laws or violate any other constitutional right.

The emphasis put upon this limitation of the State's power in the cases cited cannot be ignored. We submit, however, that discussion of the State's power to impose unconstitutional conditions for permission to do business in the State is wholly beside the question. It is admitted that there is a great conflict of authority upon this question, which we have entered upon only because of the language used by the court below. The later decisions of this court clearly imply that no such conditions can be imposed while there are decisions of State courts holding that the power to exclude embraces the power to exclude for unconstitutional as well as for valid reasons.

It is enough for our purpose that neither the lawmaking nor judicial power of the State has attempted to prescribe that a tax of six or any other per cent. shall be paid by a foreign charitable or religious corporation as a condition of succession by inheritance or devise in Illinois, while the domestic corporation goes free. The court has merely used its assertion of the conceded power of the State regarding the admission of foreign corporations to its borders to support an unwarranted conclusion.

We have then a case where the corporation is properly in Illinois, and the question whether being within the jurisdiction of the State the latter can apply to it different rules of taxation than it applies to its own corporations of the same character. It is not a question of admission to the State, but of treatment after taking title through devise and where no conditions are imposed. It is the case described by Mr.

Justice HARLAN in his dissenting opinion in *Philadelphia Fire Association* v. *New York*, 119 U. S., 110, which dissent is upon the theory that the Pennsylvania Company was already within the jurisdiction of the State, and therefore subject to constitutional protection, while the prevailing opinion held its tenure was from year to year, and that it was not within the jurisdiction of the State for these purposes when it failed to comply with the laws prescribing the conditions upon which it could do business within the State. Neither the opinion in this case nor in any of the cases referred to warrant the conclusion that when the corporation is in the State in compliance with law, unequal and discriminating taxes may be levied.

In *Erie Railway Company* v. *State*, 2 Vroom, 531 (s. c., 86 Am. Dec., 226), the court had occasion to consider this precise question. The transit duty of three cents on every passenger and two cents on every ton of merchandise levied by any corporation doing business in New Jersey not being a corporation of that State, was plainly unconstitutional as a regulation of commerce by the State authority. This attempt was defended because it applied only to the business of foreign corporations. Of this contention the court said (86 Am. Dec., 236-237):

> "It is not forgotten that it was pressed by counsel on the argument in defense of this law that, as at present framed, it applies solely to the business of corporations created by the laws of other States. Viewed in a merely practical light, this consideration is not of much weight, for it is evident that almost all of the commerce between the States must always be in the hands of corporations of this description, and that,

consequently, the power to tax to the point of prohibition the business of such companies is substantially the power to interdict the entire commerce. But considering the question in a theoretical point of view, it would seem to be clear that a State cannot tax for the purpose of revenue a foreign corporation in a mode different in principle from that in which she can tax one of her own domestic corporations. It is not denied that the corporate existence of a company is recognized, not by right, but of grace in foreign jurisdictions, nor that each government has the competence to refuse to recognize such existence except on its own conditions. The principle is universally acknowledged. Hence, laws requiring insurance companies and other foreign corporations to file bonds and submit to other exactions as a prerequisite to their admission in an incorporated capacity into the State. Such laws, when rightfully made, are evidently mere police regulations, designed to protect the citizens of the State in which they are enacted from loss or imposition, and on this ground their legality cannot be drawn into question. But a tax law, having revenue for its object, is based upon a principle entirely different. The right to tax for revenue is the right of the government to take so much of the property of the person or company upon whom the tax falls as such government may deem necessary for its public wants. The act of taking the property, therefore, must, of necessity, be an acknowledgment of the legal status of the person or company whose property is taken. To assert that the company whose property is thus taken has no rights but such as the government taking it chooses to confer, is to assert that such company has no title to its property but such as may be conceded to it by the taxing power. It seems to be utterly inconsistent with legal principles, which have always been deemed axiomatic, to hold that a government can recognize the legal

existence of a foreign corporation for the purpose of taxation, and at the same time can deny such legal existence for the purpose of depriving it of those rights which belong to every individual or company known to the law."

This court has repeatedly asserted the same principles. Thus, in *Barbier* v. *Connolly,* 113 U. S., 27, 31, the court said of this amendment:

> "The Fourteenth Amendment, in declaring that no State 'shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses."

In holding the tax on franchises valid and not obnoxious to the Fourteenth Amendment, in *Home Ins. Co.* v. *New York,* 134 U. S., 594, 606, this court put emphasis upon the fact that the tax applied equally to corporations of New York, saying:

"And when such legislation applies to artificial bodies, it is not open to objection if all such bodies are treated alike under similar circumstances and conditions, in respect to the privileges conferred upon them and the liabilities to which they are subjected. Under the statute of New York all corporations, joint stock companies and associations of the same kind are subjected to the same tax. There is the same rule applicable to all under the same conditions in determining the rate of taxation. There is no discrimination in favor of one against another of the same class."

In *Pembina Mining Co.* v. *Pennsylvania,* 125 U. S., 181, 189, the court, fully recognizing the right of the State to require license fees as a condition of doing business in the State, said:

"The plaintiff in error is not a corporation within the jurisdiction of Pennsylvania. The office it hires is within such jurisdiction, and on condition that it pays the required license tax, it can claim the same protection in the use of the office that any other corporation having a similar office may claim. It would then have the equal protection of the law so far as it had anything within the jurisdiction of the State, and the constitutional amendment requires nothing more. The State is not prohibited from discriminating in the privileges it may grant to foreign corporations as a condition of their doing business or hiring offices within its limits, provided always such discrimination does not interfere with any transaction by such corporation of interstate or foreign commerce. It is not every corporation, lawful in the State of its creation, that other States may be willing to admit within their jurisdiction, or consent that it have offices in them; such, for example, as a corporation for lotteries. And even where the business of a foreign corporation is not unlawful in other States,

the latter may wish to limit the number of such corporations, or to subject their business to such control as would be in accordance with the policy governing domestic corporations of a similar character. The States may, therefore, require for the admission within their limits of the corporations of other States, or of any number of them, such conditions as they may choose, without acting in conflict with the concluding provision of the first section of the Fourteenth Amendment. As to the meaning and extent of that section of the amendment, see *Barbier* v. *Connolly*, 113 U. S., 27; *Soon Hing* v. *Crowley*, 113 U. S., 703; *Missouri* v. *Lewis*, 101 U. S., 22, 30; *Missouri Pacific Railway Co.* v. *Humes*, 115 U. S., 512; *Yick Wo* v. *Hopkins*, 118 U. S., 356; *Hayes* v. *Missouri*, 120 U. S., 68.

"The only limitation upon this power of the State to exclude a foreign corporation from doing business within its limits, or hiring offices for that purpose, or to exact conditions for allowing the corporation to do business or hire offices there, arises where the corporation is in the employ of the Federal government, or where its business is strictly commerce, interstate or foreign. The control of such commerce, being in the Federal government, is not to be restricted by State authority."

This language is obviously to be read in connection with the facts of that case and has no application to the case at bar.

In *New York* v. *Roberts*, 171 U. S., 658, 663, the fact that the tax imposed was applicable to domestic as well as foreign corporations, was made a ground of decision, and that there was no purpose to discriminate "between New York corporations and those of other States to the detriment of the latter." The cases collected in the dissenting opinion

by Mr. Justice HARLAN (Mr. Justice BROWN concurring) show that the rule is well settled that there can be no discrimination as between citizens, persons or merchandise between the several States, subject only to the consideration conceded above that the State may prescribe conditions of admission to its limits as against a foreign corporation. *Blake* v. *McClung,* 172 U. S., 239, 255, is authority for the proposition under discussion, for if unconstitutional requirements cannot be made as conditions of admission, then certainly when no conditions are prescribed and the foreign corporation takes title, discrimination in taxation cannot be made. The mere assertion of a claim in court may not bring a person within the jurisdiction of the State. This court has, as we have shown, frequently held that the imposition of a tax does bring such person within the jurisdiction of the State. This makes any extended examination of *Blake* v. *McClung* unnecessary.

In *Orient Ins. Co.* v. *Daggs,* 172 U. S., 557, 566, the court said:

> "That which a State may do with corporations of its own creation it may do with foreign corporations admitted into the State. This seems to be denied, if not generally, at least as to the plaintiff in error. The denial is extreme and cannot be maintained. The power of a State to impose conditions upon foreign corporations is certainly as extensive as the power over domestic corporations, and is fully explained in *Hooper* v. *California,* 155 U. S., 648, and need not be repeated."

If discriminations in matters of taxation as between domestic and foreign corporations be permitted in the States, then all the evils foreseen and pre-

dicted by the court with reference to discriminations between citizens or in commercial regulations are sure to follow. The facts leading to the adoption of the constitution so often urged as arguments against the existence of such right of discrimination on the part of the States, are equally applicable to the present question; most of our commercial, industrial, religious and charitable interests are managed and represented through corporate organization; few of these are confined in their activities to the limits of a single State. The benevolence of our citizens is hedged in by no such narrow limits; permitted under the commerce and citizenship clauses to travel without restriction throughout our broad domain, it is common experience that citizens own property in many States other than the one of citizenship. If, as this court said (*Yick Wo* v. *Hopkins*, 118 U. S., 356, 369), this clause of the Fourteenth Amendment constitutes "a pledge of the protection of equal laws," it cannot remain so if the court now declares that the citizen or corporation (person) of one State cannot succeed to property in another State upon equal terms with the citizen or person of the State where the property is situated, taking a succession of like amount and for the same ends.

It remains to consider some of the cases which were supposed by the court below to require a contrary decision. We do this not because we suppose this court will review the State Supreme Court upon the mere question of the construction of the State statute, but to make plain the fact that the federal question was not raised except in the Humphrey's case.

We concede the rule to be in acts for general taxation that "where the law provides for the exemption of corporations or associations from taxation, it means to include domestic only, and not foreign corporations." We repeat that the Act in question establishing the exemption does not purport to exempt persons or corporations, but does exempt property used for a certain purpose. It will also appear that the decisions upon which the learned counsel rely were reached in the construction of statutes in no respect similar to the one now under consideration—it must be said, also, with all respect, that in some cases the learned courts have not had in mind, apparently, the well recognized distinctions between a general and special tax. *People* v. *Western Seaman's Friend Society*, 87 Ill., 246, involved a claim of exemption from a general property tax, and the court did not consider, and had no occasion to consider, any question of exemption from a special tax or burden. The rule is correctly stated that under the constitutional provision requiring all taxes to be imposed equally upon the property of persons and corporations, exemptions from such burdens are to be construed strictly, and not extended by judicial construction to embrace other property than is plainly expressed in the law. There were reasons also for holding the property there involved subject to taxation, found in the fact that the legal title was in the name of an individual, and was not used wholly "for purely public charity." The court, construing this language, was of the opinion that it was designed to embrace such institutions as are founded and maintained by the State, as contradistinguished

from those founded by private enterprise. The case is a recognition of the rule more succinctly stated, perhaps, in *People* v. *Graceland Cemetery Co.*, 86 Ill., 336, that

> "the true spirit of our laws requires that all property should bear its just proportion of the burden of taxation, and where an exception is made in favor of a corporation, justice demands that it should show clearly a compliance with the terms and spirit of the act exempting it from taxation before it can be permitted to escape a duty incumbent equally upon every citizen."

In *Cotlin* v. *Trinity College*, 113 N. Y., 133, the question was whether two legacies, one to a church and the other to a college, were entitled to exemption upon the ground that they were included within the term "incorporated companies," as defined by general law. The collateral inheritance tax act (Chap. 713, Laws 1887), among other things, subjects to its provisions all property which shall pass by will to any "body politic or corporate * * * other than to * * * the societies, corporations and institutions now exempted by law from taxation." One legacy was to Trinity College, a Connecticut corporation, incorporated in 1823, located at Hartford, in that State, and the other was to St. Paul's Protestant Episcopal Church of Poughkeepsie, a religious society of New York, incorporated under the general act for the incorporation of religious societies, passed in 1813. The court said (p. 137):

> "The law regulating the taxation of corporations, in the absence of special legislation, is to be found in the general statutes of the State. The general rule of taxation is declared in Sec-

tion 1, Title I, Chapter 13, Part 1, of the Revised Statutes. This section declares that 'all lands and all personal estate within the State, whether owned by individuals or by corporations, shall be liable to taxation, subject to the exemptions hereinafter specified.'

"By this section all the real and personal estate of corporations is taxable, unless exempted in whole or in part by subsequent provisions of the chapter. When, therefore, a corporation not exempted from taxation by its charter, or some special enactment, but governed by the general law, claims exemption, it must be able to point to some provision in Chapter 13, or to some amendment which takes it out of the general rule declared in Section 1, or else its claim must be disallowed.

"The counsel for the defendant, conceding this to be the rule, insists that the personal property of incorporated colleges and religious societies in this State is exempted from taxation by the seventh subdivision of Section 4 of Title 1, Chapter 13, which section specifies the property exempt from taxation, the specification in the seventh subdivision being, 'the personal property of every incorporated company not made liable to taxation on its capital, in the fourth title of this chapter.'

"This contention assumes that incorporated colleges and religious societies are incorporated companies within this subdivision. By reference to this fourth title it will be found that it deals exclusively with the subject of taxation of moneyed or stock corporations, and contains no reference to the taxation of charitable, religious, literary or other corporations or institutions not organized for business purposes; and this class of corporations is not made liable by that chapter to any taxation whatever, either on their real or personal estate."

And after pointing out that other provisions of the same act demonstrated that subdivision 7, above quoted, had no such broad and sweeping construction as was contended by the defendants, the court continued:

"But coming more directly to the consideration of subdivision 7, and construing it in the light of the antecedent legislation in this State on the subject of taxation, and also in connection with Chapter 4, to which it refers, we are of the opinion that the words *incorporated companies,* used in that subdivision, were intended to designate only business and stock corporations which, by Chapter 4, were, under the special circumstances therein stated, exempted from taxation on their capital, and that they do not embrace incorporations not having a capital, or not being moneyed or stock corporations using their capital for the purpose of income or profit. * * * (p. 141). It is plain we think that the phrase *incorporated companies* did not include incorporations for religious, literary or charitable purposes. These words would be quite inapt to describe an incorporated college or an incorporated church or hospital or eleemosynary society. This construction renders the different subdivisions of Section 4 harmonious and consistent. * * * (p. 142). We know of no general statute exempting the personal property of religious societies or colleges from taxation, and we are of opinion that neither St. Paul's Church nor Trinity College was 'exempted by law from taxation' within the Collateral Inheritance Act of 1887.

"Trinity College, as has been stated, is exempted from taxation by the law of Connecticut. It has no exemption under the laws of this State, and it seems plain that the words 'now exempted by law,' in the Act of 1887, refer to exemptions under our laws, and that exemption of a foreign corporation from taxation under

> the laws of the jurisdiction of origin does not withdraw it from the operation of the inheritance tax law."

In re Prime's Estate, 136 N. Y., 347, involved the construction of the amendments of 1890 and 1891 to the Act of 1887. By the Act of 1890 religious, educational, bible, missionary, charitable and other specified corporations were forbidden to hold property exceeding in value three million dollars, and it was provided that the personal estate of such corporations within the limits named should be exempt from taxation. The Act of 1891, as to exemption of corporations from the collateral inheritance tax was the same as the Act of 1887, except that the words "or from collateral inheritance tax" were added. The court will note that these acts and amendments are all statutes providing for the incorporation of New York corporations and defining the powers and privileges. The court held that the exemption was not intended to be broader than the act itself, and must therefore be confined to New York corporations. The court said (p. 359):

> "It seems very plain that the purpose of the original Act of 1889, and of the amending Act of 1890, was to regulate and define the corporate powers and privileges of the domestic corporations only. They are acts conferring and regulating corporate capacity and privileges. The power of corporations to take and hold property is a corporate power and depends upon their charters. The law of this State cannot enlarge or change the powers of a foreign corporation. They are solely those given by the law of the domicil. * * * (p. 360). In general we are of the opinion that a statute of a State granting powers and privileges to corporations must, in

the absence of plain indications to the contrary, be held to apply only to corporations created by the State, and over which it has the power of visitation and control. Such is the natural interpretation of such legislation, in the absence of contrary intention appearing on the face of the Act. The legislature, in such cases, is dealing with its own creations, whose rights and obligations it may limit, define and control. * * * (p. 362). A general law of the State prohibiting corporations from exercising particular powers will operate upon foreign corporations, not because the act binds such corporations *ex proprio vigore*, but for the reason that their exercise of such powers here would violate the public policy of the State, indicated by the general restraint imposed upon our own corporations. It is the policy of society to encourage benevolence and charity. But it is not the proper function of a State to go outside of its own limits and devote its resources to support the cause of religion, education or missions for the benefit of mankind at large. The argument may have force that the State might, consistently with its proper function, give immunity from taxation to some of the foreign corporations engaged in the work of education or charity. But, however this may be, we are convinced that the statute of 1891 has no application to foreign corporations; and, having reached that conclusion, our duty is ended."

In re Balleis Estate, 144 N. Y., 132, is to the same effect.

It seems evident that a construction of statutes regulating domestic corporations and specifying that certain of such corporations shall be exempt, can throw no light upon the construction of a statute exempting certain property when passing to certain defined uses and not pretending to deal with the tak-

ers or holders of such property except in one instance, viz., a corporation authorized to divide profits among its members.

United States v. *Perkins,* 163 U. S., 624, likewise referred to in the opinion of the court below, is without importance in this discussion. There were two points involved in that case: *First,* is an inheritance tax a tax upon property? and it was held not to be, but a tax upon the right to succeed to property. *Second,* the statute of New York exempted from such tax the property of certain religious, educational, charitable and reformatory institutions, and it was held that the United States as a political or governmental corporation was not within any of these descriptions, and a gift to it was not therefore exempt.

In *Minot* v. *Winthrop,* 162 Mass., 113, the bequests were to churches located in New York. The Massachusetts statute exempted charitable institutions, "the property of which is exempt by law from taxation." The court held that the phrase meant "the property of which is exempt by law *in Massachusetts* from taxation," and that a church in New York, or a college in Maine, did not fulfill the description, and that legacies to them were not exempt. *Rice* v. *Bradford,* 180 Mass., 545, is to the same effect.

In *Alfred University* v. *Hancock* (P. C., N. J.), 46 Atl., 178, there was involved the construction of the New Jersey inheritance tax law, and the question whether a bequest by a citizen of that State to Alfred University, an institution located in Allegheny County, New York, was subject thereto. It was held

that the university was a charitable institution, but was not within the exemptions of the statute, which were held to be limited to domestic charities. The act under which the decision was reached provided (Ch. CCX, Laws N. J., 1894):

> "all property which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while being a resident of the State, and all property which shall be within this State, and any part of such property, and any interest therein or income therefrom, which shall be transferred by inheritance, distribution, bequest, devise, deed, grant, sale or gift aforesaid, made or intended to take effect in possession or enjoyment after the death of the intestate, testator, grantor or bargainor, to any person or persons, or to a body politic or corporate, excepting churches, hospitals and orphan asylums, public libraries, bible and tract societies, and all religious, benevolent and charitable institutions and organizations, in trust or otherwise, * * * shall be subject, etc."

The decision in *Humphreys* v. *State,* 70 Oh. St., 67 (s. c., 101 Am. St. Rep., 888), is cited as an authority against our contention. The exemption in that case extended to property or interests in property transmitted "to or for the use of any institution in said State for purposes of purely public charity, or other exclusively public purpose." It was held that a foreign charitable corporation was not within the description of "any institution in said State," and that the imposition of an inheritance tax upon foreign charitable corporations operating to some extent within the State as to property received by them therein by gift, bequest or devise, is not unconstitutional as an unlawful discrimination against them or as denying them the equal protection of the law.

The principle so often asserted by this court that the imposition of a tax necessarily implies that the object, whether a person, property or a right, is within the jurisdiction of the State imposing such a tax, is wholly ignored by the court.

Its conclusion is based upon the cases we have already examined, and if we are correct in our contention that such cases furnish no justification for the conclusion reached upon the precise question here under discussion, it follows that the decision in *Humphreys* v. *State* is erroneous.

We concede that, as the court says, the legislature has the right in laying taxes to classify corporations.

We deny the conclusions drawn from this premise that in making such classification the line may be drawn at the State line and that it is competent for the State to impose one rate of taxation upon the property owned or taken by a domestic corporation, and another rate upon property so owned or taken by a foreign corporation of precisely the same character as the domestic corporation.

It is that kind of discrimination which is forbidden by the clause of the Fourteenth Amendment inhibiting any State from denying to any person within its jurisdiction the equal protection of the laws.

It is stated in appellee's brief (pp. 7, 44) that if the amendatory act of 1901 as construed by the Supreme Court of Illinois is repugnant to the Fourteenth Amendment, then the judgment of the Supreme Court of Illinois should be affirmed, because it is said the right of plaintiff in error to exemption from the tax must fail with the act.

This proposition and conclusion can scarcely have been seriously advanced. We are constrained to believe that counsel are attempting to be facetious.

No one doubts that the language used by the law-making power is adequate to exempt all property, the beneficial use of which is devised for religious, educational or charitable purposes. The Supreme Court of Illinois has held that a discrimination is made, an inequality created in the benefits conferred by this act as between corporate persons of Illinois and corporate persons of Kentucky coming into the succession. To this we interpose the Fourteenth Amendment as guaranteeing to these persons the equal protection of the laws. Manifestly, if this court sustains our contention, the discrimination against the plaintiff in error will be void, not the exemptions authorized by the act of 1901.

Respectfully submitted.

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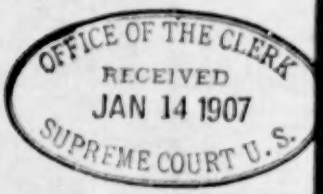

No. 103.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1906.

THE BOARD OF EDUCATION OF THE KENTUCKY ANNUAL CONFERENCE OF THE METHODIST EPISCOPAL CHURCH,
Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error.

} In Error to the Supreme Court of the State of Illinois.

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING WITH STATEMENT OF REASONS IN SUPPORT THEREOF.

CHARLES H. ALDRICH,
LAWRENCE MAXWELL, JR.,
ATTORNEYS FOR PLAINTIFF IN ERROR.

BARNARD & MILLER, PRINTERS, CHICAGO

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SUPREME COURT OF THE UNITED STATES,

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THE BOARD OF EDUCATION OF THE KENTUCKY ANNUAL CONFERENCE OF THE METHODIST EPISCOPAL CHURCH, *Plaintiff in Error,* vs. **THE PEOPLE OF THE STATE OF ILLINOIS,** *Defendant in Error.*	In Error to the Supreme Court of the State of Illinois.

Motion for leave to file petition for rehearing, with statement of reasons in support thereof.

Now comes the plaintiff in error and moves the court that leave be granted to file a petition for rehearing herein, for reasons stated, and accompanying this motion.

CHARLES H. ALDRICH,
LAWRENCE MAXWELL, JR.,
Attorneys for Plaintiff in Error.

We hereby certify that in our opinion the petition for rehearing herein is well founded in law.

CHARLES H. ALDRICH,
LAWRENCE MAXWELL, JR.,
Of Counsel.

THE PLAINTIFF IN ERROR RESPECTFULLY PETITIONS THE COURT FOR A REHEARING HEREIN AND IN SUPPORT OF SUCH PETITION SUBMITS THE FOLLOWING SUGGESTIONS.

Under ordinary circumstances we would not venture in this court to ask leave to file a petition for rehearing and an order that the cause stand for reargument.

In view of the fact that the court has adopted a suggestion made by counsel for defendant in error which we declined to discuss, and from that premise has reached a decision at once in conflict with the purpose of the Fourteenth Amendment, as declared by contemporaneous legislation, and fraught, as we believe, with peril in the future, we feel it our duty to make this petition.

In its opinion the court says:

> "In other words, we must regard the act as if the legislature had, in explicit language, excluded from its provisions foreign corporations. If this renders the act void, plaintiff in error, whether its argument be tenable or untenable, seems to be put in the dilemma urged by the defendant in error, and an affirmance of the judgment is required. If the Act of May 10, 1901, is invalid, it cannot give exemption from taxation to either domestic or foreign corporations, and plaintiff in error was rightly taxed under the Act of June 15, 1895," etc.

We declined to discuss this suggestion of counsel, as not seriously made. In view of its apparent adoption by this court, we were evidently in error in treating it thus lightly.

We assumed, as does the court, in the first sentence quoted, that the act was to be read as though all property, the beneficial use of which was devoted to religious, educational or charitable purposes, was exempted from the succession tax, except only property so devoted to which the succession accrued to a foreign corporation; and we assumed that if this discrimination was held invalid under the Fourteenth Amendment, not that the entire statute of exemption would be held void, but only the discrimination,—as that only would be the part in conflict with the Fourteenth Amendment. The plenary power of the State over the subject of taxation, subject only to the limitation that in the exercise thereof, the rights guaranteed by the Constitution of the United States, should not be infringed, was admitted in the most explicit manner.

We were aware that the Supreme Court of California had held, *In re* Mahoney, 133 Cal., 180, that an inheritance tax law which exempted from its provisions, nephews and nieces when residents of the state, while imposing the tax upon the succession when taken by nephews and nieces, non-residents of the state, was void as in conflict with Section 2, Article IV of the Constitution of the United States, *and, therefore,* all nephews and nieces were left subject to the tax as provided prior thereto. The court thought the act of such a kind as not to come within the principle that only the unconstitutional parts of the act were void.

This was recognized as an error by the same court in the case *In re* Estate of Johnson, 139 Cal., 532, where the court held that the whole exemption was

not made void by the fact that under the constitution there could be no discrimination as between citizens of different states, but the exemption must be accorded to nephews and nieces who are citizens of any of the sister states.

The discussion in the case last cited is so clear and convincing that we were led into over-confidence, and fear we did not sufficiently consider the pressure of business in the court and which should have admonished us to state the reasons for disallowing the suggestion of counsel that such a dilemma existed. Speaking upon this subject, the Supreme Court of California said:

> "Section 2 of Article 4 of the Constitution of the United States declares that 'the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.' In this there is no striking down of or limitation upon the right of a state to confer such immunities and privileges upon its own citizens as it may deem fit. The clause of the constitution under consideration, is protective merely, not destructive, nor even yet restrictive. Over and over again has the highest court of the United States so construed this provision. Thus in the Slaughter-House Cases, 16 Wall., 36, it is said: 'The constitutional provision there alluded to did not create those rights which it called privileges and immunities of citizens of the states. * * * Nor did it profess to control the power of the state governments over the rights of its own citizens. Its sole purpose was to declare to the several states that whatever rights, as you grant or establish them to your own citizens, or as you limit or qualify or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other states within your jurisdiction.'

See, also, *Blake* v. *McClung,* 172 U. S., 239, 19 Sup. Ct. Rep., 165; *Ward* v. *Maryland,* 12 Wall., 418. It will be noted not only that the constitutional provision is not restrictive, but that it is neither penal or prohibitory. It nowhere intimates that an immunity conferred upon citizens of sister states, shall therefore be void. Some force might be given to such an argument were the constitutional provision couched in appropriate language for the purpose. If, for example, it had said, 'No citizen of any state shall be granted any immunity not granted to every citizen of every state,' or had it begun its declaration by saying that 'It shall be unlawful to grant to citizens of any state any privilege or immunity not granted to citizens of every state,' it might then have been argued that a legislative attempt so to do would be declared violative of the express mandate of the constitution, and therefore void. But such is neither the scope, purpose, nor intent of the provision under consideration. It leaves to the state perfect freedom to grant such privileges to its citizens as it may see fit, but secures to the citizens of all the other states, by virtue of the constitutional enactment itself, the same rights, privileges and immunities. So that, in every state law conferring immunities and privileges upon citizens, the constitutional clause under consideration, *ex proprio vigore,* becomes an express part of such statute. Thus it is expressed by Mr. Justice Harlan, in *Blake* v. *McClung,* 172 U. S., 239; 19 Sup. Ct. Rep., 165: 'The object of the constitutional guaranty was to confer on the citizens of the several states a general citizenship, and to communicate all the privileges and immunities which the citizens of the same state would be entitled to under like circumstances. * * * These principles have not been modified by any subsequent decision of this court.' Here, then, in precise terms, and from the highest court of our land, charged

with the duty of construing our governmental law, it is declared that the purpose of the constitutional guaranty is to confer and communicate all privileges which may thus be granted by a state to its own citizens, a rule of construction obviously radically different from that which would strike down an immunity granted by a state to its own citizens, because in terms such immunity had not been conferred upon citizens of all the states. It is unnecessary that a statute should so expressly provide. The constitution itself becomes a part of the law.

And this, in giving operation to that constitutional provision, is what the courts have always done. They have never stricken down the immunity and the privilege which a state may have accorded to its own citizens." (The italics are ours.) "They have never annulled the exemption. They have always construed the law so as to relieve the citizens of other states, and place all upon equal footing. Thus, in Vermont, where a statute exempted certain personal property of residents, but did not exempt the like property of non-residents, the tax upon the latter, not the exemption upon the former, was adjudged void, so that non-residents should enjoy the equal right of exemption: *Sprague* v. *Fletcher,* 69 Vt., 69; 37 Atl., 239. And in Massachusetts, where the state law required every corporation to retain and pay to the state one-fifteenth of all dividends payable to stockholders residing outside the state, the Supreme Court of Massachusetts in like manner adjudged the burden void, and extended the exemption to all citizens of sister states: *Oliver* v. *Washington Mills,* 11 Allen, 268. And by the Supreme Court of Alabama the section of the statute imposing a tax upon slaves belonging to residents of other states higher than that imposed upon slaves belonging to citizens of the state was ad-

judged void only as to the burden. And for further instances reference may be made to *Wiley* v. *Parmer*, 14 Ala., 627; *Fechheimer* v. *City of Louisville*, 84 Ky., 306, 2 S. W., 65; *McGuire* v. *Tax Collector*, 32 La. Ann., 832; *State* v. *Board Ins. Com.*, 37 Fla., 564, 20 South., 772; *Roby* v. *Smith*, 131 Ind., 342, 31 Am. St. Rep., 439, 36 N. E., 1093; *Shirk* v. *La Fayette*, 52 Fed., 857; *Black* v. *Seal*, 6 Houst., 541; *Davis* v. *Pierse*, 7 Minn., 13, 82 Am. Dec., 65; *Blake* v. *McClung*, 172 U. S., 239, 19 Sup. Ct. Rep., 165. *In all these cases, and in every other case, if a privilege or immunity has been by the state conferred upon its citizens, and not in terms upon the citizens of other states, such privilege and immunity is not for that reason declared void, but the protecting arm of the constitution is thrown around the citizens of every other state who thus are embraced within the privilege granted. The converse of the proposition is this—and it is the form in which the question has most frequently arisen—that when a state has sought to impose a burden upon citizens of other states not imposed upon citizens of its own state, such effort is always held to be void.*" (The italics are ours.) "This is a most vital distinction, which is lost sight of in the Mahoney case. Thus the last expression of the legislative will in the amendment of 1897 was to confer an exemption upon citizens of the State of California—a particular class—nephews and nieces. It was the legislative design, clearly expressed, that their property should not be subjected to the burden of the tax, and yet by that decision upon their property is imposed a burden which the legislature not only meant should not be imposed, but from which it expressly declared that the property should be exempted. The result is the judicial creation and imposition of a burden—a tax—in forthright violation of the declared legislative intent. This a court will never

do. It is for the legislature alone to impose burdens by way of taxation. It is never the province or prerogative of a court. The holding in the Mahoney case, striking out the amendment of 1897, imposes a special tax upon citizens of this state, not by legislative enactment, but in the teeth of the express legislative prohibition. It is a canon of construction that an act of the legislature will yield to the constitution so far as necessary, but no further: *Scott* v. *Flower,* 61 Neb., 620; 85 N. W., 857. The constitutional immunity goes only to citizens of sister states, and there is a clear distinction thus recognized between citizens of the states and citizens of the United States who are not citizens of any state, as well as citizens of alien states: *Murray* v. *McCarty,* 2 Munf., 393. By virtue of the Constitution of the United States, the immunity which the legislature by the amendment of 1897 conferred upon citizens of this state is extended to citizens of sister states, but the immunity goes no further. Citizens of territories, of the District of Columbia, and of our new possessions, as well as aliens, are not exempted, and their property is thus liable for the tax.

The case of *Sprague* v. *Thompson,* 118 U. S., 90; 6 Sup. Ct. Rep., 988, cited in the opinion in the Mahoney case, is expressly in point upon this question. There the act of Georgia provided that shipmasters of all vessels bearing toward the ports of Georgia, excepting coasters of the state, etc., refusing to accept a pilot, shall be liable to pay, etc. The manifest and express design of this law was to impose a burden upon all vessels entering the ports of Georgia, excepting those owned by its citizens. It came in direct conflict with Section 4237 of the Revised Statutes of the United States. That section was enacted in exercise of the commerce power of Congress, and provides that 'no regulations or provisions shall be adopted by any

state which shall make any discrimination in the rate of pilotage between vessels sailing between ports of one state and vessels sailing between ports of different states, or any discrimination, * * * and all existing regulations or provisions making any such discriminations are annulled and abrogated.' Those provisions had to do wholly with the commercial relations existing between states. Section 4237 prohibited the enactment of statutes of a certain description, and provided that by their terms they must not discriminate in the particulars mentioned. Herein there was no question of conferring benefits. It was the question of imposing illegal exaction, and the Supreme Court of the United States declared that the effort of the State of Georgia so to do was void. Up to this point the decision could have been taken for granted. The law was plain, almost commonplace, but in the argument an attempt was made to have the Supreme Court uphold the whole law by striking out the exception, and this it refused to do upon the ground, not that they were not separable, but that in eliminating the exception a burden was imposed upon a class, when the legislature never had intended to impose it. In this sense the provisions were inseparable, and the whole section was annulled. In the case at bar we have the expression of the legislative intent to confer a certain immunity upon citizens of this state. By force of the Constitution of the United States, that immunity is extended to all citizens of sister states, leaving, as liable for the burden of the tax, the property of all other nephews and nieces, aliens and citizens of the United States, who are not citizens of any particular state."

It is our contention that the same principles apply to the construction of the Fourteenth Amendment and its prohibition against denying to any person within its jurisdiction the equal protection of

the laws. Corporations are persons within the meaning of this clause.

The court bases the right to impose a different succession tax upon domestic and foreign corporations, upon the conceded right of the state "to classify objects of legislation and discriminate between classes." The court in effect holds that this right to classify would justify discriminations between citizens of the taxing state and citizens of other states. The court says:

> "The case presented especially a comparison of the rights of corporations, but the decision was broad enough to consider natural persons. 'In laying such a tax' (an inheritance tax), the court said, 'the legislature may consider the relation which the person or corporation given the right of succession sustains to the deceased, to the property or to the State, and may regulate the amount of tax to be required in view of such relation, and in exercising this power may lay a tax on the right of one class of persons or corporations to take, and may deem it wise to impose no tax upon the right of other classes of persons or corporations to take.' A Federal Court would hesitate indeed to put impediments on this power or declare invalid any classification of persons or corporations that had reasonable regard to the purposes of the state and its legislation. And it cannot be said that if a state exempts property bequeathed for charitable or educational purposes from taxation it is unreasonable or arbitrary to require the charity to be exercised or the education to be bestowed within her borders and for her people, whether exercised through persons or corporations."

The power of the State over the subject of succession taxes is no greater than its power over gen-

eral property taxes. It follows then that the court holds that, in the exercise of its power of taxation under its power of classification, the classification can be of the property of citizens of the state and citizens of other states, of persons of the state and persons of other states. We insist that this is the necessary result of the court's decision. The authorities cited in the California case show that heretofore it has been supposed and held that discriminations along state lines were prohibited. We feel that, for this court to hold that each state may discriminate in its taxation in favor of its own citizens and against the citizens of other states, in favor of its own corporations and against those of other states, by levying a low rate upon one and a higher rate upon the other, is revolutionary and dangerous, and ought not to be done until a fuller argument can be had.

When the Fourteenth Amendment was adopted, Congress enacted the following (Sec. 1977, Rev. Stat.):

> "All persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

This Act of 1870, after the adoption of the Fourteenth Amendment in July, 1868, was a re-enactment of the Civil Rights Act of 1866. In the reenactment, there was added to the clause that all

persons within the jurisdiction of the United States should enjoy the same rights as white citizens and be subject only to like punishments, pains and penalties, the words "taxes, licenses, and exactions of every kind, and to no other."

Whatever may have been the right to discriminate between persons for reasons of state citizenship, organization or residence prior to the Fourteenth Amendment, it is plain that Congress supposed that it was thereafter forbidden. The right of a state to classify persons and property within its own borders is recognized subject to the limitations stated.

Mr. Justice FIELD said, in *County of San Mateo* v. *Southern Pac. R. Co.*, 13 Fed. Rep., 145, 150, 151:

> "The concluding clause of its first section was designed to cover all cases of possible discriminating and partial legislation against any class, in ordaining that no state shall deny to any person within its jurisdiction the equal protection of the laws. Equality of protection is thus made the constitutional right of every person; and this equality of protection implies not only that the same legal remedies shall be afforded to him for the prevention or redress of wrongs and the enforcement of rights, but also that he shall be subjected to no greater burdens or charges than such as are equally imposed upon all others under like circumstances. No one can, therefore, be arbitrarily taxed upon his property at a different rate from that imposed upon similar property of others, similarly situated, and thus made to bear an unequal share of the public burdens. Property may indeed be classified, and different kinds be subjected to different rates. Real property may be taxed at one rate and personal property at another.

Property in particular places may be taxed for local purposes, while property situated elsewhere is exempt. License taxes may also vary in amount, according to the calling or business for which they are exacted. But arbitrary distinctions not arising from real differences in the character or situation of the property, or which do not operate alike upon all property of the same kind similarly situated, are forbidden by the amendment. Equality in the imposition of burdens is the constitutional rule as applied to the property of individuals, where it is subject to taxation at all; and this imports that an uniform mode shall be followed in the estimate of its value, and that the contribution exacted shall be in some uniform proportion to such value prescribed, according to the nature or position of the property. All state action, constitutional or legislative, impinging upon the enforcement of this rule, must give way before it. Congress, in its legislation since the adoption of the amendment, has recognized this to be the rule. The amendment was adopted in 1868, and in 1870 Congress re-enacted the Civil Rights Act; and to the clause that all persons within the jurisdiction of the United States should enjoy the same rights as white citizens, and be subject only to like punishment, pains and penalties, it added, and be subject only to like 'taxes, licenses and exactions of every kind, and to no other.'" Rev. St., Sec. 1977.

In re Ah Fong, 3 Saw., 144, this same learned Justice held that this amendment implies not only equal amenability to the courts and the enforcement of rights, but equal exemptions with others of the same class of all charges and burdens of every kind.

In *Santa Clara County* v. *Southern Pac. R. Co.,* 18 Fed. Rep., 385, the same Justice held that:

"Persons do not lose their right to equal pro-

tection guaranteed by the Fourteenth Amendment to the Federal Constitution when they form themselves into a corporation under the laws of California."

"The state possesses no power to withdraw corporations from the guaranties of the Federal Constitution. Whatever property a corporation lawfully acquires is held under the same guaranties which protect the property of natural persons from spoliation."

"Under the reserved power to amend, alter or repeal the laws under which private corporations are formed, the state cannot exercise any control over the property of a corporation, except such as may be exercised through control over its franchise, or over like property of natural persons engaged in similar business."

When these cases came on for hearing under the title of The Railroad Cases, 13 Fed. Rep., 722, it was held:

"The Fourteenth Amendment of the Constitution, in declaring that no state shall deny to any person within its jurisdiction the equal protection of the laws, imposes a limitation upon the exercise of all the powers of the state which can touch the individual or his property, including among them that of taxation."

"The equal protection of the laws to anyone implies, not only that he has a right to resort to the courts of the country for the security of his person or property, the prevention and redress of wrongs, and the enforcement of contracts, but also that he is exempt from any greater burdens or charges than such as are equally imposed on all others under like circumstances. This equal protection forbids unequal exaction of any kind, and among them that of unequal taxation."

"Private corporations are persons, within the meaning of the first section of the Fourteenth

> Amendment, and are entitled, so far as their property is concerned, to the equal protection of the laws." * * * "The state possesses no power to withdraw corporations from the guaranties of the Federal Constitution. Whatever property a corporation lawfully acquires is held under the same guaranties which protect the property of natural persons from spoliation."

Mr. Justice FIELD said (13 Fed., 748):

> "All the guaranties and safeguards of the constitution for the protection of property possessed by individuals may, therefore, be invoked for the protection of the property of corporations. And as no discriminating and partial legislation, imposing unequal burdens upon the property of individuals, would be valid under the Fourteenth Amendment, so no such legislation imposing such unequal burdens upon the property of corporations can be maintained."

In this court, in *Santa Clara County* v. *Southern Pac. R. Co.*, 118 U. S., 394, 396, this statement was made:

> "The court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution which forbids a State to deny to any person within its jurisdiction the equal protection of the laws applies to these corporations. We are all of opinion that it does."

In *Blake* v. *McClung*, 172 U. S., 239, 251, the court quotes *Ward* v. *Maryland*, 12 Wall., 418, 430, as follows:

> "Beyond doubt, those words are words of very comprehensive meaning, but it will be sufficient to say the clause plainly and unmistakably secures and protects the right of a citizen of one State to pass into any other State of the

Union for the purpose of engaging in lawful commerce, trade or business without molestation; to acquire personal property; to take and hold real estate, to maintain actions in the courts of the state, and to be exempt from any higher taxes and excises than are imposed by the State upon its own citizens. Comprehensive as the power of the State is to lay and collect taxes and excises, it is nevertheless clear, in the judgment of the court, that the power cannot be exercised to any extent in a manner forbidden by the Constitution."

In *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S., 540, 562-3, it is said:

"A state may in its wisdom classify property for purposes of taxation, and the exercise of its discretion is not to be questioned in a court of the United States, so long as the classification does not invade rights secured by the Constitution of the United States." * * * "We must not be understood by what has been said as conceding that the question of a denial of the equal protection of the laws can never arise under the taxing statutes of a state. On the contrary, the power to tax is so far limited that it cannot be used to impair or destroy rights that are given or secured by the supreme law of the land."

In *Cotting* v. *Kansas City Stock Yards*, 183 U. S., 79, 103, 108, the court, speaking of this right of classification by a state in objects of legislation in its relation to the Fourteenth Amendment, said:

"It may be assumed, for the purposes of the question now to be considered, that so far as the Constitution of Kansas is concerned, its legislature may enact a law, general in its terms, and yet so phrased as necessarily to have operation only upon a single individual or corporation, but while making that concession, we

cannot shut our eyes to the fact that this act is precisely the same in its effect as though the legislature had said in terms that the Kansas City Stock Yards alone shall be subjected to its provisions. Accepting, however, the full force of the general language in which the statute is couched, it appears that a classification is attempted between the stock yards doing a large and those doing a small business. The express and only basis of classification is in the amount of business done by the two classes." * * *

p. 104: "The question thus presented is of profoundest significance. Is it true in this country that one who, by his attention to business, by his efforts to satisfy customers, by his sagacity in discerning the probable courses of trade, and by contributing of his means to bring trade into those lines, succeeds in building up a large and profitable business, becomes thereby a legitimate object of the legislative scalping knife?" * * *

p. 108: "Equal protection of the laws means equal exemption with others of the same class from all charges and burdens of every kind. * * * A classification of the kind attempted makes a distinction between corporations identically alike in organization, capital and all other powers and privileges conferred by law. It is arbitrary and wanting in reason."

We submit that these citations abundantly establish the proposition that the state, in the exercise of its power of classification for purposes of taxation, cannot base its classification upon the citizenship, organization or residence of the owners or takers of the property, discriminating in favor of its own and against those of other states.

As we have shown upon our original brief, the theory of our constitution, as adopted, was

to secure equality of privileges and burdens throughout the entire United States. This fear of discrimination and desire for equality had reference not only to citizenship, but extended also to commercial tariff imposts and tax regulations. This court has often recognized that this condition made the adoption of the constitution possible. For the court now to say that the power to classify implies the power to destroy this equality of right and burden, and justifies favoritism in the exercise of the taxing power as between citizens and persons of different states is, we earnestly insist, contrary to reason and authority and pregnant with evils of the most serious nature. As this error has arisen through our failure to fully argue these questions, we respectfully ask that we may be permitted to file these suggestions, and that the cause stand for reargument at such time as the court may determine.

Respectfully submitted,

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Attorneys for Plaintiff in Error.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1906.

No. 403

THE BOARD OF EDUCATION OF THE KENTUCKY ANNUAL CONFERENCE OF THE METHODIST EPISCOPAL CHURCH,
Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error.

In Error to the Supreme Court of the State of Illinois.

BRIEF AND ARGUMENT FOR PEOPLE OF THE STATE OF ILLINOIS, DEFENDANT IN ERROR.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1906.

No. 103

THE BOARD OF EDUCATION OF THE KENTUCKY ANNUAL CONFERENCE OF THE METHODIST EPISCOPAL CHURCH,
Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error.

In Error to the Supreme Court of the State of Illinois.

BRIEF AND ARGUMENT FOR PEOPLE OF THE STATE OF ILLINOIS, DEFENDANT IN ERROR.

STATEMENT OF FACTS.

This was originally a proceeding commenced before the County Judge of Cook county, Illinois, by the People of the State of Illinois to collect the inheritance tax due under the last will and testament of Fanny Speed, deceased, under an act of the legislature of the State of Illinois known as "An act to tax gifts, legacies and inheritances in certain cases, and to provide for the collection of the same," approved June 15, 1895.

At the time of her death Fanny Speed was a resident of the State of Kentucky and owned an undivided one-half interest in certain real estate in the City of Chicago, which interest was appraised at the sum of $210,000. One-half of this undivided one-half interest was devised by her will to the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, the plaintiff in error, a corporation organized under and existing by virtue of the laws of the State of Kentucky with power "to form an educational fund to be styled the Centenary Educational Fund for the promotion of literature, education, art, morality and religion within the bounds of said conference, to be held and used exclusively for educational and religious purposes in the State of Kentucky."

An inheritance tax of $6,280.50 was assessed against the plaintiff in error based upon the value of the interest in said real estate received by it under decedent's will, and to which assessment the plaintiff in error objected upon the ground that by reason of the nature of its organization it was exempt from said tax under an act of the legislature of the State of Illinois approved May 10, 1901, amending the act entitled "An act to tax gifts, legacies and inheritances in certain cases, and to provide for the collection of the same," approved June 15, 1895, and which amendatory act is as follows:

> "When the beneficial interest of any property or income therefrom shall pass to or for the use of any hospital, religious, educational, bible, missionary, tract, scientific, benevolent, or charitable purpose, or to any trustee, bishop, or minister of any church or religious denomina-

tion, held and used exclusively for the religious, educational or charitable uses and purposes of such church or religious denomination, institution or corporation, by grant, gift, bequest or otherwise, the same shall not be subject to any such duty or tax, but this provision shall not apply to any corporation which has the right to make dividends or distribute profits or assets among its members."

The County Judge denied the exemption claimed by plaintiff in error on the ground that the amendatory act of 1901 did not apply to corporations organized out of the State of Illinois, and entered an order assessing the tax. Plaintiff in error appealed to the County Court of Cook County, where a similar order was entered, and from the order of the County Court prosecuted its appeal to the Supreme Court of the State of Illinois. The Supreme Court of Illinois found that the amendatory act of 1901 did not exempt corporations organized out of the State of Illinois; that by reason of such construction the amendatory act was not repugnant to the Fourteenth Amendment to the Constitution of the United States, and that, therefore, the plaintiff in error was not entitled to the exemption claimed by it under the amendatory act, and affirmed the judgment of the County Court of Cook County, to reverse which order of affirmance the plaintiff in error has brought this matter to this court by writ of error.

BRIEF.

I.

IF PLAINTIFF IN ERROR SEEKS TO REVERSE THE JUDGMENT OF THE SUPREME COURT OF ILLINOIS ON THE GROUND THAT ITS CONSTRUCTION OF THE AMENDATORY ACT OF 1901 IS ERRONEOUS AND REPUGNANT TO THE CONSTITUTION OF THE UNITED STATES WITHOUT DRAWING INTO QUESTION THE VALIDITY OF THE ACT, THEN THERE IS NO FEDERAL QUESTION INVOLVED, THIS COURT IS WITHOUT JURISDICTION AND THE WRIT OF ERROR SHOULD BE DISMISSED.

Section 709, U. S. Revised Statutes.

Santa Cruz County Supervisors v. *Santa Cruz R. R. Co.*, 111 U. S., 361.

Baltimore & Potomac R. R. Co. v. *Hopkins*, 130 U. S., 210.

United States v. *Lynch*, 137 U. S., 280.

Sage v. *Louisiana Board of Liquidation*, 144 U. S., 647.

Morley v. *L. S. & M. S. Ry. Co.*, 146 U. S., 162.

Marchant v. *Pennsylvania R. R. Co.*, 153 U. S., 380.

Central Land Co. v. *Laidley*, 159 U. S., 103.

Union National Bank v. *Louisville, N. A. & C. Ry. Co.*, 163 U. S., 325.

Turner v. *Wilkes Co. Commissioners*, 173 U. S., 461.

Johnson v. *New York Life Ins. Co.*, 187 U. S., 491.

II.

IF PLAINTIFF IN ERROR SEEKS TO REVERSE THE JUDGMENT OF THE SUPREME COURT OF ILLINOIS UPON THE GROUND THAT THE AMENDATORY ACT OF 1901, AS CONSTRUED BY THE SUPREME COURT OF THAT STATE, IS INVALID BECAUSE REPUGNANT TO THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, THEN

(A) IN DETERMINING THE VALIDITY OF THE AMENDATORY ACT OF 1901, THIS COURT SHOULD FOLLOW THE CONSTRUCTION PLACED UPON THAT ACT BY THE SUPREME COURT OF ILLINOIS.

Machine Co. v. *Gage*, 100 U. S., 676.

Chicago, Milwaukee & St. Paul Ry. Co. v. *Minnesota*, 134 U. S., 418.

Missouri Pacific R. R. Co. v. *Nebraska*, 164 U. S., 403.

Ludeling v. *Chaffe*, 143 U. S., 301.

Morley v. *L. S. & M. S. Ry. Co.*, 146 U. S., 162.

Illinois Central R. R. Co. v *Illinois*, 163 U. S., 142.

Noble v. *Mitchell*, 164 U. S., 367.

Osborne v. *Florida*, 164 U. S., 650.

New York State v. *Roberts*, 171 U. S., 658.

Covington v. *Kentucky*, 173 U. S., 231.

Turner v. *Wilkes County Commissioners*, 173 U. S., 461.

Gulf & Ship Island R. R. Co. v. *Hewes*, 183 U. S., 66

Western Union Telegraph Co. v. *Gottlieb*, 190 U. S., 412.

(B) THE CONSTRUCTION OF THE AMENDATORY ACT OF 1901 BY THE SUPREME COURT OF ILLINOIS IS CORRECT.

Catlin v. *Trustees*, 113 N. Y., 133.

Prime's Estate, 136 N. Y., 347.

Balleis' Estate, 144 N. Y., 134.

Minot v. *Winthrop*, 162 Mass., 113.

Alfred University v. *Hancock*, 46 Atl., 178 (N. J. Prerog. Ct.)

United States v. *Perkins*, 163 U. S., 625.

People v. *Western S. F. Society*, 87 Ill., 246.

Theological Seminary v. *Illinois*, 188 U. S., 662.

(c) THE AMENDATORY ACT OF 1901, AS CONSTRUED BY THE SUPREME COURT OF ILLINOIS, IS NOT REPUGNANT TO THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Blake v. *McClung*, 172 U. S., 239.

Kochersperger v. *Drake*, 167 Ill., 122.

Billings v. *People*, 189 Ill., 472 (188 U. S., 97).

Magoun v. *Illinois Trust & Savings Bank*, 170 U. S., 283.

United States v. *Perkins*, 163 U. S., 625.

Blackstone v. *Miller*, 188 U. S., 189.

Kidd v. *Alabama*, 188 U. S., 730.

Giozza v. *Tiernan*, 148 U. S., 657.

Davidson v. *New Orleans*, 96 U. S., 97.

Merchants' Bank v. *Pennsylvania*, 167 U. S., 461.

Bells Gap Railroad v. *Pennsylvania*, 134 U. S., 232.

United States v. *Fox*, 94 U. S., 315.

Humphreys v. *State*, 70 Ohio St., 67.

Central Land Co. v. *Laidley*, 159 U. S., 103.

Marchant v. *Pennsylvania Railroad Co.*, 153 U. S., 380.

Campbell v. *California*, 200 U. S., 87.

(D) IF THE AMENDATORY ACT, AS CONSTRUED BY THE SUPREME COURT OF THE STATE OF ILLINOIS, IS REPUGNANT TO THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, THEN THE JUDGMENT OF THE SUPREME COURT OF ILLINOIS SHOULD BE AFFIRMED.

ARGUMENT.

I.

IF PLAINTIFF IN ERROR SEEKS TO REVERSE THE JUDGMENT OF THE SUPREME COURT OF ILLINOIS ON THE GROUND THAT ITS CONSTRUCTION OF THE AMENDATORY ACT OF 1901 IS ERRONEOUS AND REPUGNANT TO THE CONSTITUTION OF THE UNITED STATES WITHOUT DRAWING INTO QUESTION THE VALIDITY OF THE AMENDATORY ACT, AS CONSTRUED BY THE SUPREME COURT OF ILLINOIS, THEN THERE IS NO FEDERAL QUESTION INVOLVED, THIS COURT IS WITHOUT JURISDICTION, AND THE WRIT OF ERROR SHOULD BE DISMISSED.

Plaintiff in error invokes the jurisdiction of this court upon the following grounds.

First, that by the order of affirmance of the Supreme Court of Illinois, and the proceedings prior thereto, "there was drawn in question *the validity of an authority* exercised under the statute of Illinois on the ground that the authority, as exercised, was repugnant to the Constitution of the United States, and the decision is in favor of the validity of the authority as exercised;" and, second, because "a right, privilege or immunity was claimed under the Constitution of the United States by plaintiff in error, and the decision is against the right, privilege or immunity especially set apart or claimed by said

plaintiff in error." (See petition for writ of error, Rec., 61 and 62; Trans., 34.)

But two errors are assigned upon this record, namely,

> "First, the court erred in holding this plaintiff in error liable to said tax of $6,280.50, because the *imposition of a tax* upon this plaintiff in error, while corporations organized for like purposes under the laws of the State of Illinois are exempt, *renders the act of May 10th, 1901,* amending an act entitled 'An act to tax gifts, legacies and inheritances in certain cases, and to provide for the collection of the same,' approved June 15, 1895, *void as to this plaintiff in error, and is in conflict with the fourteenth amendment* to the Constitution of the United States in that it abridges the privileges and immunities of this plaintiff in error, which is a citizen of the United States, deprives the plaintiff in error of its property without due process of law and denies to this plaintiff in error the equal protection of the laws;
>
> "Second, the court erred in holding said corporation liable to said tax of $6,280.50, for that said corporation is, by reason of its organization and the purposes of said organization, as shown by the record in this case, exempt from such tax under the Act of May 10, 1901, amending an act entitled, 'An act to tax gifts, legacies and inheritances in certain cases, and to provide for the collection of the same,' approved June 15, 1895."

See assignment of errors on petition for writ of error (Rec., 66, 67; Trans., 36).

The second error will stand or fall with the first, and the first error is therefore the only one necessary to be considered at this time.

Defendant in error claims a right to impose a tax upon the plaintiff in error under the original inheritance tax law held to be constitutional by this court in the case of *Magoun* v. *Illinois Trust & Savings Bank,* 170 U. S., 283. The plaintiff in error claims that it is exempt from such tax by virtue of the amendatory act of 1901, which provided that when the beneficial interests of any property should pass to any hospital, religious and educational purpose, etc., the same should not be subject to the tax provided for in the original act.

The Supreme Court of Illinois held that it was not the intention of the legislature in enacting the amendatory act of 1901 to extend the exemptions therein provided for to corporations created under the laws of another state, and then held that the amendatory act thus construed was not repugnant to the Fourteenth Amendment to the Constitution of the United States, and consequently held that the imposition of the tax in question upon the plaintiff in error was authorized by the statutes.

If, as we shall contend, this court has no jurisdiction in this matter except to pass upon the validity of the amendatory act of 1901 *as construed,* then we are unable to perceive what possible interest the plaintiff in error can have in the prosecution of this proceeding, for, if, *as construed,* this amendatory act is in conflict with the Fourteenth Amendment, all right to the exemption thereunder of not only the plaintiff in error, but of all other beneficiaries named in the amendatory act, both local and foreign, must fail. It is not clear whether counsel for plaintiff in error seek to attack only the construction of the

amendatory act or the validity of the amendatory act as construed. The error assigned is in effect that the *imposition* of a tax upon the plaintiff in error makes the amendatory act void as to plaintiff in error, and is in conflict with the Fourteenth Amendment; in other words, that the *imposition* of the tax and not the *statute* itself is in conflict with the Fourteenth Amendment. In the petition for a writ of error plaintiff in error invokes the jurisdiction of this court because the validity of an *authority under the statute,* not the validity of the *statute,* was drawn into question by the judgment of the Supreme Court of Illinois.

Inasmuch as the Supreme Court of Illinois has held in effect that the imposition of the tax and the authority exercised in imposing the tax were supported by the statutes of the state, it would seem that the only question left for this court would be the validity of the act under which this authority was exercised and the imposition of the tax justified. Yet, owing to the lack of possible interest of plaintiff in error in a determination of the constitutionality of the amendatory act as construed, and owing to the uncertain meaning of the assignment of errors in connection with the grounds for the writ of error stated in the petition, and being unadvised as to just what position will be taken by counsel for plaintiff in error upon this question in their argument, we have deemed it advisable to base the first branch of our argument upon the assumption that plaintiff in error is in reality only attacking the *construction* of the amendatory act rather than its validity as construed.

And if, regardless of this lack of interest in the outcome, plaintiff in error is in fact submitting to this court the validity of the amendatory act as construed, then the court may disregard the remainder of this branch of our argument as not pertinent to the issue, as in part second hereof we shall devote our argument to the merits of the issue upon that question.

The jurisdiction of this court to review the decisions of the highest court of a state is governed by section 709 of the *Revised Statutes*, with which this court is so familiar that it is unnecessary to quote its provisions. The writ in this case was issued upon two of the grounds provided in this section. First, because the judgment of the Supreme Court of Illinois was in favor of the validity of an authority the exercise of which was claimed to be repugnant to the Constitution of the United States, and second, because the decision was against a right, privilege or immunity claimed under the Constitution of the United States. The *authority* referred to must mean nothing other than the right of the State of Illinois to impose the tax in view of the amendatory act granting the exemption in question, and the *right, privilege and immunity* claimed refer to the right of plaintiff in error to the same exemption granted to similar corporations organized within the State of Illinois. The Supreme Court of Illinois has held that the right to impose the tax and to refuse the exemption to this plaintiff in error is authorized by the statutes of the State, and we contend that this court is without jurisdiction to reverse or review this decision except upon

the question as to whether or not the amendatory act, as thus construed, is repugnant to the Constitution of the United States, and if plainiff in error does not deny the validity of the amendatory act, but only attacks the construction of it by the Supreme Court of Illinois, then this writ of error should be dismissed.

Santa Cruz County Supervisors v. *Santa Cruz R. R. Co.*, 111 U. S., 361, was before this court upon a motion to dismiss a writ of error to the Supreme Court of the State of California, and Chief Justice Waite delivered the following opinion:

> "This was a suit brought by the Santa Cruz Railroad Company to require the Board of Commissioners of the County of Santa Cruz to deliver certain bonds claimed to be due from the county under a contract with the railroad company. The defenses were:
>
> "1. That the contract was unilateral and therefore not binding on the county;
>
> "2. That the Board of Supervisors exceeded its authority in making the contract, and
>
> "3. That a repealing statute passed after the contract was entered into took away the power of the board to make any further delivery of the bonds.
>
> "No objection whatever was made to the validity of the statute under which the board assumed to act in making the contract. The whole defense rested on the construction and effect to be given to certain statutes which no one denied the constitutional power of the legislature to enact.
>
> "The ground of federal jurisdiction relied upon in the brief of counsel for the county is that by the issuance of the bonds demanded in this proceeding the state would deprive the taxpayers of the County of Santa Cruz of property without due process of law, contrary to the

right, privilege or immunity secured by the first section of the Fourteenth Amendment to the Constitution of the United States.

"That was not the question presented to or decided by the state court. In that court the inquiry was whether the proceedings of the board to charge the county were according to law, not whether the law under which the proceedings were had was constitutional and binding upon the tax-payers. The state court decided that the proceedings were in accordance with the requirements of the law, and thus created an obligation on the part of the county to deliver the bonds, which was not discharged by the repealing statute relied on. This decision involved no question of federal law and is not reviewable here."

The motion to dismiss was granted.

While the Supreme Court of Illinois did, in this case, pass upon the validity of the amendatory act as construed, yet it should be borne in mind that for the purpose of this branch of this argument we are assuming that plaintiff in error is not claiming before this court that the amendatory act itself is unconstitutional.

Baltimore & Potomac R. R. Co. v. *Hopkins,* 130 U. S., 210, before this court on writ of error to the Supreme Court of the District of Columbia, was an action brought by Hopkins against the railroad company for injuries inflicted by the company permitting cars to remain on the public street in front of his premises for an unreasonable length of time. The railroad company claimed that it possessed and exercised authority by virtue of grants from the United States to do all that it did do in the premises, the validity of which authority it was insisted

was denied by the court. A portion of the opinion delivered by Chief Justice Fuller was as follows, page 223:

> "That part of original paragraph 25, and of the act of 1867, as to decisions in favor of the validity of a statute of, or of an authority exercised under, any state, when drawn in question on the ground of their being repugnant to the Constitution, treaties or laws of the United States, has been frequently passed upon, and the distinction between the construction of a statute, or the extent of an authoritiy, and the validity of a statute, or of an authority, pointed out. Thus in *Commercial Bank of Cincinnati* v. *Buckingham,* 5 How., 317, where a general law had declared all banks liable to pay six per cent interest on their notes when they had refused payment on demand, and a subsequent act, incorporating the bank in question, provided for the payment of twelve per cent, and the question was whether the bank was liable to pay eighteen, this court held that the question submitted to and decided by the state court was one of construction and not of validity. There both the prior and subsequent statutes were admitted to be valid under any construction of them, and therefore, no construction placed by the state court on either of them could draw in question its validity, as being repugnant to the Constitution of the United States, or any act of Congress.
>
> "In *Lawler* v. *Walker,* 14 How., 149. where, in 1816, the legislature of Ohio had passed an act to prohibit the issuing and circulation of unauthorized bank paper, and in 1839 an act amendatory thereof, and the question arose whether or not a canal company incorporated in 1837 was subject to these acts, it was held that the Supreme Court of Ohio, in deciding that it was, only gave a construction to an act of Ohio, which neither of itself or by its application in-

volved in any way a repugnancy to the Constitution of the United States by impairing the obligation of a contract.

"Whenever the power to enact a statute, as it is by its terms or is made to read by construction, is fairly open to denial and denied, the validity of such statute is drawn in question, but not otherwise.

"In *Millingar* v. *Hartupee*, 6 Wall., 258, 261, 262, it was held that the word 'authority' stands upon the same footing with 'treaty' or 'statute,' and, said the court, through Chief Justice Chase:

" 'Something more than a bare assertion of such an authority seems essential to the jurisdiction of this court. The authority intended by the act is one having a real existence derived from competent governmental power. If a different construction had been intended Congress would doubtless have used fitting words. The act would have given jurisdiction against claims and authority under the United States. In many cases the question of the existence of an authority is so closely connected with the question of its validity that the court will not undertake to separate them, and in such cases the question of jurisdiction will not be considered apart from the question upon the merits, or except upon hearing in regular order, but where, as in this case, the single question is not of the validity but of the existence of an authority, and we are fully satisfied that there was and could have been no decision in the state court against any authority under the United States existing in fact, and that we have therefore no jurisdiction of the case brought here by writ of error, we can perceive no reason for retaining it upon the docket.' "

And on page 225:

"The case at bar does not involve the exercise of an authority under the United States in the sense of an authority to act for the gov-

ernment, but it is claimed that the railroad company acted under certain statutes of the United States authorizing such action, and that the validity of these statutes, or of authority under them, was denied."

Page 226:

"The jury were told that all stoppage of trains and shifting of cars necessary for carrying cars out of its freight depot, over the different tracks, for the purpose of making up freight trains, were lawful. The right of the railroad company to establish freight stations, or to lay as many tracks as its president and board of directors might deem necessary, was not questioned, but the court also held that the company was not justified in occupying the public streets for the purposes of a freight yard as such, because the various statutes bearing upon the matter did not authorize such occupation, with which conclusion we are inclined to agree, though we forbear a determination of the point until presented in a case properly pending before us. The validity of the statutes and the validity of the authority exercised under them, are, in this instance, one and the same thing, and 'the validity of a statute,' as these words are used in this act of Congress, refers to the power of Congress to pass the particular statute at all, and not to mere judicial construction as contradistinguished from a denial of legislative power. In our opinion the validity of no act of Congress, or authority under the United States, was so drawn in question here as to give us jurisdiction, and therefore, as the amount of the judgment did not exceed $5,000, the writ of error must be dismissed."

United States v. *Lynch*, 137 U. S., 280, also before this court upon a writ of error to the Supreme Court of the District of Columbia, was an applica-

tion for a mandamus to compel the Fourth Auditor and Second Comptroller to audit and allow a claim for mileage upon the ground that the statute authorizing such mileage was so plain as not to admit of construction. It was contended that this court had jurisdiction because the validity of an authority exercised under the United States was drawn in question. The court say, page 285:

> "It is now argued that the duty of the Fourth Auditor and of the Second Comptroller, under the last clause of Section 2 of the Act of 1835, and the decision of this court in relation to it, was merely ministerial, and that by the disallowance of relator's claim for mileage these officers exercised a discretion which they did not possess; that this was an invalid exercise of an authority under the United States; and that hence the validity of the authority was drawn in question. In order to justify this position, however, the validity of the authority must have been drawn in question directly and not incidentally. The validity of a statute is not drawn in question every time rights claimed under such statute are controverted, nor is the validity of an authority, every time an act done by such authority is disputed. The validity of a statute or the validity of an authority is drawn in question when the existence, or constitutionality, or legality of such statute or authority is denied, and the denial forms the subject of direct inquiry."

See, also, *Sage* v. *Louisiana Board of Liquidation*, 144 U. S., 647.

The case of *Morley* v. *Lake Shore & Michigan Southern Railway Co.*, 146 U. S., 162, was a writ of error to the Court of Appeals of the State of New York to reverse a decision of that court hold-

ing that a judgment obtained before the passage of the act of the legislature of that state, reducing the rate of interest, was not a contract or obligation excepted from the operation of the act. The court say, page 166:

> "The first question we have to consider is the effect to be given to the saving clause contained in the first section of the act of June 20, 1879, which provides that nothing therein contained shall be so construed as to in any way affect any contract or obligation made before the passage of that act. This question is answered for us by the decision of the Court of Appeals of New York in this very case, holding that this saving clause is not applicable in the case of a judgment like the plaintiff's."

And on page 167:

> "The meaning of a state statute, declared by the highest court of a state, is conclusive upon this court. *Randall* v. *Brigham,* 7 Wall., 523, 541. If, then, the law as enacted by the legislature, and construed by the judiciary, will be the law of the state, it follows that, as to the proper construction of the statute, and as to what should be regarded as among its terms, no federal question could arise. The most that could be claimed would be that although the statute of the state was unobjectionable, yet the state court had erroneously construed it. This would constitute a purely judicial error, involving no question of the validity of the law, which latter question alone is, by the plainest possible terms of the constitution and judiciary act, subject to investigation here. Assuming, then, that the statute in question was correctly construed by the New York court, our only inquiry must be as to the validity of the statute itself, as construed by the state court."

In *Marchant* v. *Pennsylvania R. R. Co.*, 153 U. S., 380, which was a writ of error to the Supreme Court of Pennsylvania, it was said by this court, page 385:

> "We are not authorized to inquire into the grounds and reasons upon which the Supreme Court of Pennsylvania proceeded in its construction of the statutes and constitution of that state, and if this record presented no other question except errors alleged to have been committed by that court in its construction of its domestic laws, we should be obliged to hold, as has often been held in like cases, that we have no jurisdiction to review the judgment of the state court, and we should have to dismiss this writ of error for that reason."

In *Johnson* v. *New York Life Insurance Co.*, 187 U. S., 491, the writ of error to the Supreme Court of the state of Iowa was dismissed, and it was held that where the courts of one state fully consider the statute of another state, and the case turns upon the construction of the statute, and not upon its validity, due faith and credit is not denied by one state to the statute of another state, and the manner in which the last is construed is not necessarily a federal question.

In *Central Land Co.* v. *Laidley*, 159 U. S., 103, a writ of error to the Supreme Court of Appeals of the State of Virginia was dismissed on the ground that this court had no jurisdiction of a writ of error to the state court on the ground that the obligation of a contract has been impaired, when the validity of the statute under which the contract was made is admitted, and the only question was as to its construction by the state court. See, also, *Turner* v. *Wilkes County Commissioners*, 173 U. S., 461.

We therefore contend that the effect of the construction placed upon the amendatory act of 1901, by the Supreme Court of Illinois, was to incorporate that construction into the wording of the act, so that the act, as it now stands before this court, is to be construed the same as if, in so many words, it excluded foreign corporations from the benefit of the exemptions therein provided for, and that unless plaintiff in error denies the validity of the amendatory act thus construed, and submits that question to this court, there is nothing for this court to consider, and the writ of error should be dismissed upon the doctrine of the authorities above cited.

II.

IF PLAINTIFF IN ERROR SEEKS TO REVERSE THE JUDGMENT OF THE SUPREME COURT OF ILLINOIS UPON THE GROUND THAT THE AMENDATORY ACT OF 1901, AS CONSTRUED BY THE SUPREME COURT OF THAT STATE IS INVALID BECAUSE IN CONFLICT WITH THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, THEN THE JUDGMENT OF THE SUPREME COURT OF ILLINOIS SHOULD BE AFFIRMED.

We are unable to comprehend what object plaintiff in error hopes to accomplish in attacking the validity of the very act under which it must claim its right to the exemption. The Supreme Court of Illinois passed upon the validity of the act as construed, because plaintiff in error before that court claimed that the construction contended for by defendant in error would make the amendatory act unconstitutional. By passing upon the validity of the act the Supreme Court of Illinois decided a constitutional question, and it is only that question which can be brought before this court for review.

In their Assignment of Errors counsel for plaintiff in error claim that the *imposition* of the tax upon plaintiff in error, under the circumstances, is in conflict with the Fourteenth Amendment. The real meaning of this is, that the *refusal* to allow plaintiff in error the exemption provided by the amendatory act is in conflict with the Fourteenth Amendment.

Under the doctrine of the cases referred to in the first part of our argument, and those hereafter cited, plaintiff in error cannot complain of the refusal to allow it the exemption in question, or deny the validity of the authority under which the exemption is refused, without in fact drawing into question and denying the validity of the act itself under which the exemption is claimed.

Upon the theory, then, that plaintiff in error, in contending before this court that the imposition of the tax upon it while similar organizations within the State of Illinois are exempt, is in conflict with the Fourteenth Amendment, in fact, brings before this court for determination the validity of the amendatory act of 1901, as construed, we shall contend that the amendatory act, as construed, is not in conflict with the Fourteenth Amendment, and that the judgment of the Supreme Court of Illinois should be affirmed for the following reasons:

(A) IN DETERMINING THE VALIDITY OF THE AMENDATORY ACT OF 1901, THIS COURT SHOULD FOLLOW THE CONSTRUCTION PLACED UPON THAT ACT BY THE SUPREME COURT OF ILLINOIS.

In determining whether the amendatory act of 1901 is in conflict with the Fourteenth Amendment, the act must be construed in connection with the

interpretation placed upon it by the Supreme Court of Illinois. The act before this court in effect is one which extends an exemption to local corporations which is directly denied to foreign corporations.

It is universally recognized that the judicial department of every government is the appropriate organ for construing the legislative acts of that government, and the acts thus construed are considered the same as if the words of the construction were originally embodied in the act itself, and the construction becomes a part of the statute law. This rule has been so universally adopted by this court, in passing upon the validity of state statutes, that it would seem unnecessary to cite authorities in support of the rule.

Counsel for plaintiff in error, in asserting the amendatory act is unconstitutional, are obliged to do so solely upon the ground that the construction of the act has made it so. The position that, because the construction of the act has made it unconstitutional, the construction should be reversed is untenable. The construction placed by the Supreme Court of Illinois upon this act is binding upon this court, and this court cannot find that it was the intention of the Illinois legislature, in passing the act, to include foreign corporations in view of the decision of the Supreme Court of Illinois that such was not the intention, nor the true meaning of the act as passed.

In the case of *Machine Co.* v. *Gage*, 100 U. S., 676, the Supreme Court of Tennessee had decided that the law of that state, imposing an annual tax upon all peddlers of sewing machines, levied such tax upon all peddlers of sewing machines without re-

gard to the place of the manufacture of the machine. Upon writ of error from this court, this court held, page 677:

> "The sewing machines here in question were made in Connecticut. The Supreme Court of the state (Tennessee) held in this case that the law taxing the peddlers of sewing machines levied the tax upon all peddlers of sewing machines without regard to the place of growth or produce of material or manufacture. We are bound to regard this construction as correct, and to give it the same effect as if it were a part of the statute."

In *Illinois Central R. R. Co.* v. *Illinois*, 163 U. S., 142, it was claimed the statute of Illinois requiring railroad companies to stop their trains at county seats long enough to receive and let off passengers with safety amounted to an unconstitutional hindrance and obstruction of inter-state commerce and of the passage of the mails of the United States. This court held, upon writ of error to the Supreme Court of the State of Illinois, page 152:

> "The Supreme Court of the State, however, held that the statute not only required every train to stop at every county seat at which it arrived, but that, as Cairo was admitted to be a county seat, the statute required every train passing through the City of Cairo to go to and stop at the station in that city. The construction given to the statute in this particular by the state court does not involve any federal question and must be accepted by this court in judging the constitutionality of the statute. *Chicago, etc., Railway* v. *Minnesota*, 134 U. S., 418, 456.
>
> "But the decision that the statute so construed was not an unconstitutional interference with interstate commerce or with the carrying

> of the mails by the United States was a decision in favor of the validity of a state statute whose validity was drawn into question on the ground of its being repugnant to the Constitution and laws of the United States, as well as a decision against a right specially set up and claimed under the national Constitution and laws, and is therefore clearly reviewable by this court."

The court then proceeded to hold that the statute of Illinois, *as construed and applied by the Supreme Court of the state,* was unconstitutional.

Noble v. *Mitchell,* 164 U. S., 367, was a writ of error to the Supreme Court of the State of Alabama. The action below was originally instituted against the defendants, a firm of insurance agents doing business in the State of Alabama, to recover the loss under a fire insurance policy, under the provisions of a statute which made the local agents of a foreign insurance company which had not obtained a state license personally liable for the loss. The Supreme Court of Alabama affirmed the validity of the statute, and enforced its provisions against the plaintiffs in error despite their objection that the statute was repugnant to the Constitution of the United States. The statute in question originally included associations and partnerships as well as corporations. The Supreme Court of Alabama also held that by a subsequent amendment the act became separable in its provisions, and so far as applied to and imposed against foreign corporations it did not contravene any provision of the state constitution or of the Constitution of the United States. This court held, on page 372:

"This construction of the Alabama statute, although made by the Supreme Court of that state, it is urged, is erroneous, and we are invited to disregard it; but manifestly the interpretation of a statute of the State of Alabama by the Supreme Court thereof under the circumstances here presented is binding on us. *Dibble* v. *Bellingham Bay Land Co.*, 163 U. S., 63, 73; *Union Bank* v. *Louisville, New Albany, etc., Railway*, 163 U. S., 325, 331.

"Reading, then, into the Alabama statute the construction given thereto by the court of last resort of that state, the argument of the plaintiff in error amounts to this, that, although it is admitted that the law of the State of Alabama regulating the doing of insurance business by foreign corporations is not in conflict with the Constitution of the United States, nevertheless we should hold that it does violate that Constitution, because of another and separate law of Alabama, which, it is asserted, would be unconstitutional if it were before us for consideration. Of course, to state this proposition is to answer it."

In *Missouri Pacific Railway Co.* v. *Nebraska*, 164 U. S., 403, this court held, on page 414:

"The Supreme Court of Nebraska has construed this statute as authorizing the Board of Transportation to make the order questioned in this case, which required the railroad company to grant to the relators the right to erect an elevator upon its right of way at Elmwood station on the same terms and conditions on which it had already granted to other persons rights to erect two elevators thereon. *The construction so given to the statute by the highest court of the state must be accepted by this court in judging whether the statute conforms to the Constitution of the United States.*"

The act in question as construed was held to be in conflict with the Fourteenth Amendment to the Constitution.

In the case of *Osborne* v. *Florida,* 164 U. S., 650, the constitutionality of a statute of Florida imposing a tax upon express companies doing business in Florida was questioned on the ground that it violated the commerce clause of the Federal Constitution, and was not sufficiently determinate, definite and certain in its character upon which to ascertain the amount to be paid for licenses. This court held, page 654:

> "The particular construction to be given to this state statute is a question for the state court to deal with, and in such a case as this we follow the construction given by the state court to the statutes of its own state. *Leffingwell* v. *Warren,* 2 Black, 599; *People* v. *Weaver,* 100 U. S., 539, 541; *Noble* v. *Mitchell,* 164 U. S., 367, 372, and cases there cited.
>
> "In other words, this statute, as construed by the Supreme Court of Florida, does not exempt the express company from taxation upon its business which is solely within the state, even though at the same time the same company may do a business which is interstate in its character, and that as to the latter kind of business, the statute does not apply to or affect it. As thus construed we have no doubt as to the correctness of the decision that the act does not in any manner violate the Federal Constitution.
>
> "The second ground for holding the statute void is that it is not sufficiently determinate, definite and certain in its character upon which to ascertain the amount to be paid for licenses. This ground furnishes no reason for interference by this court. Whether the statute be sufficiently determinate or certain in its character upon which to ascertain the amount to be

paid for a licnese is a question of the construction of the state statute which does not necessarily involve a federal question, and the determination of the state court as to the proper construction and sufficiency of such a statute is conclusive upon us."

The case of *Western Union Telegraph Co.* v. *Gottlieb*, 190 U. S., 412, was a writ of error to the Supreme Court of the State of Missouri to reverse the judgment of that court upon a statute taxing the property of a telegraph company situated within the state. This court held, on page 425:

> "But it is contended that the method of assessment followed in those cases was sustained because they were prescribed by the legislature, and that in the case at bar the method adopted was not prescribed or authorized by the laws of Missouri. The answer is obvious. What the laws of Missouri authorized was competent for the Supreme Court of Missouri to decide, and it decided that the order of the board of equalization was legal under the constitution and statutes of the state. The decision, constituting, as it does, an interpretation of the constitution and laws of the state, is not open to dispute here."

See also *Chicago, Milwaukee & St. Paul Railway Co.* v. *Minnesota*, 134 U. S., 418, 456; *Ludeling* v. *Chaffe*, 143 U. S., 301, 305; *Morley* v. *Lake Shore & Michigan Southern Railway Co.*, 146 U. S., 162, 167; *New York State* v. *Roberts*, 171 U. S., 658, 661; *Covington* v. *Kentucky*, 173 U. S., 231, 237; *Turner* v. *Wilkes County Commissioners*, 173 U. S., 461, 463; *Gulf & Ship Island Railroad Co.* v. *Hewes*, 183 U. S., 66, 74, 75.

(B) THE CONSTRUCTION OF THE AMENDATORY ACT OF 1901 BY THE SUPREME COURT OF ILLINOIS IS CORRECT.

We believe it is safe to make the statement that all the text-books on the subject, and all the decisions, concur in holding that statutes of exemption, like that of 1901, unless they specifically provide for exempting nonresident institutions, are held not to do so, and are construed as exempting the institutions of the state only, and no distinction is to be found in the authorities in this regard between general and special taxation.

Dos Passos, in considering this subject, Section 36, 2nd Ed., says:

> "The general rule laid down by the courts under these statutes is that where the law provides for the exemption of corporations or associations from taxation it means to include domestic only and not foreign corporations."

There is no distinction between the statutes of other states and the statute of Illinois on this question.

In the case of *Catlin* v. *Trustees*, 113 N. Y., 133, it was held that under the Act of 1887 legacies to charitable and religious corporations, whether domestic or foreign, were not exempt from the collateral inheritance tax under the laws of New York. The laws of 1890, evidently adopted to extend the inheritance tax statute and make religious and charitable institutions exempt, provided:

> "Section 1. Any religious, educational, Bible, missionary, * * * or charitable corporation * * * may take and hold in its own right * * * property. * * * The personal estate of such corporations shall be ex-

empt from taxation and the provisions of Chapter 483 of the Laws of 1885, entitled An Act to Tax Gifts, Legacies, and Collateral Inheritances in certain cases, and the acts amendatory thereto, shall not apply thereto nor to any gifts to any such corporation by grant, bequest or otherwise."

It will be observed that this statute is a broad one and exempts religious and educational institutions, not only from general taxation, but from the act to tax gifts, legacies, etc. It was this statute so amended that was before the court for construction *in re Prime's Estate,* 136 N. Y., 347, where the court say, at page 360:

"We are of opinion that a statute of a state granting power and privileges to corporations must, in the absence of plain indications to the contrary, be held to apply only to corporations created by the state and over which it has the power of visitation and control. Such is the natural interpretation of such legislation in the absence of a contrary intention appearing on the face of the Act. The law in such cases is dealing with its own creations, whose rights and obligations it may limit, define and control. * * *

"The argument that gifts for the promotion of charity, education and religion should be encouraged and should not be diminished by exactions of the state, presents a moral and political, rather than a judicial question. * * *

"It is the policy of society to encourage benevolence and charity. But it is not the proper function of a state to go outside of its own limits and devote its resources to support the cause of religion, education or missions for the benefit of mankind at large. The argument may have force that the state might consistently with its proper functions give immunity from taxa-

> tion to some of the foreign corporations engaged in the work of education or charity; but however this may be, we are convinced that the Statute of 1890 has no application to foreign corporations, and having made that conclusion our duty is ended."

The transfer act of New York, 1892, provided:

> "But any property heretofore or hereafter devised or bequeathed to any person who is a bishop or to any religious corporation shall be exempt from and not subject to the provisions of this act."

In *Balleis' Estate*, 144 N. Y., 132, certain nonresident religious institutions claimed the right to be exempt under this statute. It was urged in argument that the statute already exempted resident religious institutions under the Act of 1890 and that it was the intention of the legislature in the adoption of the amendment of 1892 exempting "any property * * * devise or bequest * * * to any religious corporation" to amend the statute so that nonresident religious institutions would be exempt. Judge Gray, in deciding this question, at page 134, says:

> "The prior act was undoubtedly concerned with the granting of privileges to domestic corporations, but the Act of 1892 was legislating with respect to subjects within the jurisdiction of the state and the provision modifying the legislation as it affected certain corporations must be considered in the light of an exercise of the sovereign power within territorial limits. In creating this particular plan for the taxation of all property transferred to others upon or in contemplation of the death of its owner, the declaration of an exemption in favor of religious corporations, even though it might al-

ready exist under previous legislation, was a wise, if a superfluous provision. To say that it was intended to include foreign corporations would be to imply the granting of a privilege by the legislature without sufficient indications of an intention so contrary to ordinary state policies and to usual statutory presumption. This we should not do. The legislation in question dealt with property within the state and imposed a tax in certain cases upon its transfer to other persons or to corporations. In proceeding thereupon to confer the privilege of an exemption from its provisions in the case of any religious corporation, the legislature must be deemed to have in mind those corporations which were the creation of the state and not those in which it had no interest and over which it had no control."

The first section of the inheritance tax statute of Massachusetts (laws of 1891) provides for the exemption of gifts, "to or for charitable, educational or religious societies or institutions, the property of which is exempt by law from taxation."

In *Minot* v. *Winthrop*, 162 Mass., 113, the ninth article of the will gave to the Congregational Church and to the St. Johns Episcopal Church in the State of New York $1,000 each, and it was claimed by these organizations that they were exempt under the laws of New York. The attorney general contended that the exemptions above noted, found in the first section of the Statute of Massachusetts, were confined to societies, the property of which is exempt from taxation by the laws of Massachusetts, and this contention was sustained, the court citing with approval *Prime's Estate* and other authorities.

The statute of New Jersey exempts churches, hospitals, orphan asylums, and all religious and char-

itable institutions and organizations, and by a subsequent act of 1898 this was extended to certain institutions, whether incorporated under the laws of New Jersey or not.

In the case of *Alfred University* v. *Hancock*, 46 Atl., 178, it was contended by the Alfred University that it was exempt. The inheritance tax act of New Jersey follows that of Massachusetts and in the first section imposing the tax, churches, hospitals, orphan asylums and all religious, benevolent and charitable institutions are exempted. Judge Reed, in deciding the case, says:

> "Conceding the charitable character of the institution, does the exemption apply to institutions located without the limits of the state of New Jersey? The overwhelming weight of authority is that where the legislature grants exemption from such a tax to corporations or organizations, it includes in the exemption only domestic corporations and organizations."

The court cited with approval *Catlin* v. *Trustees*, *Prime's Estate*, *Balleis' Estate*, and many other authorities, and concludes:

> "On the strength of these authorities I shall hold that the exception in the Act of 1894 does not cover the present bequest to the Alfred University, a corporation and institution situated in the State of New York."

In *United States* v. *Perkins*, 163 U. S., 625, a bequest was made to the United States and the United States claimed it was exempt as a corporation "exempt by law from taxation" within the meaning of the New York statute. After citing and considering a number of the cases before referred to, Justice Brown says, at page 630:

"If the ruling of the Court of Appeals of New York in this particular case be not absolutely binding upon us, we think that, having regard to the purpose of the law to impose a tax upon inheritance, the legislature intended to allow an exemption only in favor of such corporations as it had itself created and which might reasonably be supposed to be the special objects of its solicitude and bounty."

The act of Illinois of 1872 provides for the exemption from taxation of *all* property of institutions of purely public charity when actually and exclusively used for such charitable purposes.

The Western Seamen's Friend Society was organized for the dissemination of moral and religious instruction and other charities among sailors and laborers doing business on our Western waters, and as such claimed to be exempt from taxation. Of the right of this nonresident corporation to be exempt from taxation, in *People* v. *Western S. F. Society*, 87 Ill., 246, Judge Scott says, at page 249:

"But if a broader construction could be given to the statute and it could be held to embrace all institutions that dispense charity, whether public or private, and the property used exclusively for that purpose, there is still a valid reason why the property in this case is not exempt from its just proportion of taxation. The statute must in any event be understood to have exclusive reference to institutions or corporations created by the laws of this state and not to foreign corporations that may choose to locate branches in this state. It is only by that comity that exists between states that foreign corporations are permitted to transact in this state the business for which they were created. The General Assembly has manifested no intention to relieve the property situated in this

> state belonging to such corporations, no matter what their business may be, whether charitable or otherwise, from the burdens of taxation, even if it possesses the power under the constitution to do so."

This section of the Revenue Act of 1872 is as broad as the Act of 1901, which is relied upon in this case. Other authorities of a similar import could be cited. The contention that a distinction should be made between the Act of 1901, exempting educational and other institutions from the inheritance tax, and the acts of New York, New Jersey and Massachusetts, construed in the cases cited, is not sustained. In New York the amendment was made for the express purpose of exempting religious and educational institutions from the operation of the inheritance tax statute, and that statute is referred to in the act and the same may be said of the Act of 1892, while in Massachusetts and New Jersey the provision for exempting these institutions is in the first clause of the statute imposing the tax and in each case the language is as broad as the Illinois act.

The contention that a distinction should be made between statutes imposing a general tax and a statute of this character is not well founded. It is conceded where a tax is imposed, and especially a special tax, that the state or the taxing power must be able to point to express authority for imposing the tax and that taxation is a hard and heavy burden and that the law should be strictly construed in favor of the tax payer, but when there is a statute imposing a tax upon a general class of persons or upon a general class of property, as in this case, upon

all property taken by corporations, and if a corporation or party taking such property claims an exemption, then the burden is upon such corporation or party to show clearly they come within the provisions of such exemption.

In *Theological Seminary* v. *Illinois*, 188 U. S., 662, where exemption was claimed under the charter of the seminary, Justice Peckham, in announcing the rule of construction in this regard, said, at page 672:

> "The rule is that in claims for exemptions from taxation under legislative authority, the exemption must be plainly and unmistakably granted; it cannot exist by implication only; a doubt is fatal to the claim."

It is insisted, however, that this controversy is quite immaterial in this case, as there is no doubt remaining to be solved. We have a statute in Illinois exempting certain institutions from the payment of an inheritance tax. By all authorities, such exemptions are not extended to foreign or nonresident corporations, unless so expressly provided in the statute, and there is no such provision in the statute under consideration.

When the legislature in Illinois adopted the Act of 1901, statutes of this kind had been construed by a great number of states, and a similar statute had been construed by the Supreme Court of the state in *People* v. *Western S. F. Society*, *supra*, and by the ordinary rules of construction it is to be presumed the legislature intended to adopt the construction which has always been placed upon such laws, and to restrict the exemption to corporations and institutions of the state, and, in doing so, simply

created a class which was exempted from the general provisions of the law.

(c) THE AMENDATORY ACT OF 1901 AS CONSTRUED IS NOT REPUGNANT TO THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Section 1 of the Fourteenth Amendment is as follows:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Plaintiff in error is neither a "citizen" nor a "person," nor "within the jurisdiction" of the state of Illinois, within the meaning of the Fourteenth Amendment.

In *Blake* v. *McClung*, 172 U. S., 239, the question arose upon a statute of Tennessee which enabled foreign corporations to do business in the state, but provided that "creditors who may be residents of this state shall have priority in the distribution of assets, or subjection of the same, or any part thereof, to the payment of debts over all similar contract creditors being resident of any other country or countries," etc. Hull Coal and Coke Co., a corporation of Virginia, was a creditor of the company whose assets were being distributed, and denied the validity of the statute upon the ground that, as a "citizen" of another state, it was denied

privileges and immunities of the citizens of Tennessee, contrary to Section 2, Article 4, of the Constitution, and its privileges and immunities as such citizen were denied contrary to the Fourteenth Amendment, and also as a "person" it was deprived of its property without due process of law and denied the equal protection of the laws, contrary to the Fourteenth Amendment.

This court held, pages 259 and 261:

> "But it is equally well settled, and we now hold, that a corporation is not a citizen within the meaning of the constitutional provision that 'the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.' The Virginia corporation, therefore, can not invoke that provision for protection against the decree of the state court denying its right to participate upon terms of equality with Tennessee creditors in the distribution of the assets of the British corporation in the hands of the Tennessee court."
>
> "Since, however, a corporation is a person within the meaning of the Fourteenth Amendment, may not the Virginia corporation invoke for its protection the clause of the Amendment declaring that no state shall deprive any person of property without due process, nor deny to any person within its jurisdiction the equal protection of the laws?
>
> "We are of the opinion that this question must receive a negative answer.
>
> "It is equally clear that the Virginia corporation cannot rely upon the clause declaring that no state shall 'deny to any person within its jurisdiction the equal protection of the laws.'
>
> "It does not appear to have been doing business in Tennessee under the statute here involved or under any statute that would bring it directly under the jurisdiction of the court

> of Tennessee by service of process on its officers or agents. Nor do we think it came within the jurisdiction of Tennessee within the meaning of the amendment simply by presenting its claim in the state court and thereby becoming a party to this cause. Under any other interpretation the Fourteenth Amendment would be given a scope not contemplated by its framers nor by the people nor justified by its language. We adjudge that the statute, so far as it subordinates the claims of private business corporations not within the jurisdiction of the state of Tennessee (although such private corporations may be creditors of a corporation doing business in the state under the authority of that state) to the claims against the latter corporation of creditors residing in Tennessee, is not a denial of the equal protection of the laws secured by the Fourteenth Amendment to persons within the jurisdiction of the state, however unjust such a regulation may be deemed."

This case is cited as being conclusive on the constitutional questions raised by counsel for plaintiff in error.

The claim that plaintiff in error has been deprived of its property without due process of law is also without merit because it is the well established construction of the Fourteenth Amendment that when the parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of the state court does not deprive the unsuccessful party of his property without due process of law.

See, *Central Land Co.* v. *Laidley,* 159 U. S., 103-112.

Marchant v. *Pennsylvania R. R. Co.,* 153 U. S., 380-386.

It is also our contention that the amendatory act is not repugnant to the Fourteenth Amendment for the further reason that the right to acquire property of a decedent by descent or will is purely a creature of statute and within legislative control, and in the language of the court in *Magoun* v. *Bank*, *supra*,

> "If a state may deny the privilege all together, it follows that when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policies."

At page 293 in the same case the court says:

> "In some circumstances it may not tax A more than B, but if A be of a different trade or profession than B, it may. And in matters not of taxation, if A be a different kind of corporation than B it may subject A to a different rule of responsibility to servants than B, to a different measure of damages than B, and it permits special legislation in all of its varieties (quoting authority). In other words, the state may distinguish, select, and classify objects of legislation, and necessarily this power must have a wide range of discretion."

In the same case the language of Chief Justice Fuller in *Giozza* v. *Tiernan*, 148 U. S., 657, is adopted, where it is held the Fourteenth Amendment was not intended to compel the state to adopt an iron rule of equal taxation, and Justice Bradley is quoted as follows:

> "It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades and professions and vary the rates of excise upon various prod-

> ucts. It may tax real estate and personal property in a different manner. It may tax visible property only and not tax securities for payment of money. It may allow deductions for indebtedness or not allow them."

Justice Miller said in *Davidson* v. *New Orleans*, 96 U. S., 97-105, the Federal Constitution imposes no restraints on the state in regard to unequal taxation.

It was said in *Merchants Bank* v. *Pennsylvania*, 167 U. S., 461, that the whole argument of a right under the Federal Constitution to challenge the tax on the ground of inequality in the burdens resulting from the operation of the law is put at rest by the decision in *Bells Gap Railroad* v. *Pennsylvania*, 134 U. S., 232.

A great number of these cases are cited and commented upon in *Magoun* v. *Bank, supra.*

A statute of New York provided in effect that lands could only be devised to such natural persons as are by law capable of holding by devise or to such corporations as the state had expressly authorized by charter or by statute to take by devise. Charles Fox, by his will, devised and bequeathed certain property to the United States to assist in discharging the debt created by the war of the Rebellion.

The heirs contested the will on the ground that the testator could only give his property by will to such corporation as was created by the laws of the State of New York and were authorized by it to take by devise and that the United States was not such a corporation. The contention of the heirs was sustained by the Surrogate Court and that decision was

sustained by the Supreme Court and the Court of Appeals, from which a writ of error was prosecuted to the United States Supreme Court, and the question is decided in *United States* v. *Fox*, 94 U. S., 315.

The testator died in 1870. The act of New York in express terms prohibited a devise to a foreign corporation and discriminates between a foreign corporation and one created by the statutes of that state. Justice Field, in deciding the case, at page 320, says:

> "The power of the state to regulate the tenure of real property within her limits and the modes of its accession and transfer and the rules of its descent and the extent to which a testamentary disposition of it may be exercised by its owners, is undoubted.
>
> "The power of the state in this respect follows from her sovereignty within her limits as to all matters over which jurisdiction has not been expressly or by necessary implication transferred to the Federal government."

The opinion concludes with the statement:

> "A devise to the United States of real property situated in that state is therefore void."

This case has many times been cited with approval.

Upon this doctrine a number of modern cases might also be considered, and among them

Kochersperger v. *Drake*, 167 Ill., 122.

Billings v. *People*, 189 Ill., 472 (188 U. S., 97).

United States v. *Perkins*, 163 U. S., 625.

Blackstone v. *Miller*, 188 U. S., 189.

As well as the case of *Blake* v. *McClung, supra*, and many kindred cases, such as *Kidd* v. *Alabama*, 188 U. S., 730. Yet we believe the recent decision of this court in *Campbell* v. *California*, 200 U. S., 87, is conclusive. There it is held that the Fourteenth Amendment does not deprive a state of the power to regulate and burden the right to inherit, but at the most can only be held to restrain such an exercise of power as would exclude the conception of judgment and discretion, and which would be obviously arbitrary and unreasonable as to be beyond the pale of governmental authority.

The questions involved in *Humphreys* v. *State*, 70 Ohio St., 67 (65 L. R. A., 776), are, it is submitted, precisely the same questions presented by this record, because the statute construed in that case expressly limited the exemptions to corporations of the State of Ohio.

The court expressly holds, after a discussion of many authorities, that the exemptions provided for in the statute would be limited to corporations formed in the State of Ohio without this express provision being in the statute, and that such limitation would not be repugnant to the Fourteenth Amendment.

The case is a very important one and decides the principal questions now before this court in this case. Being only the decision of a state court, however, it is used here merely as a clear statement of the doctrine upon which we claim this court should affirm the judgment of the Supreme Court of Illinois. The decision was based upon the principle that the state is sovereign as to the property within the state and as an attribute of its sovereignty has

a right to provide how it shall be disposed of on the death of the owner, and it has a right to say that it will retain for its own purposes such portion within reasonable limits as it shall determine, and that in the devolution of property by reason of the death of the owner it may regulate the amount which it will retain by reason of the classes of persons or corporations which it will permit to take the remainder. It may provide an exemption in favor of the life tenant depending on the relation of the remainder man to the testator, it may provide an exemption and at a rate depending on the relationship of the testator to the beneficiary, it may determine that certain classes shall be wholly exempt, and it may provide that no non-resident corporation shall take by devise or descent any portion of the property within the jurisdiction of the state, and if it can so provide, it may limit the amount or fix the per cent to be deducted from that class of corporations or persons not residing within the limits of the state.

The other exemptions referred to relate to the relationship of the beneficiaries to the testator or intestate. This restriction or exemption as to a non-resident corporation is regulated or may be regulated by the relationship of the beneficiary to the state itself, so that when the State of Illinois, or its courts, say that a charitable or educational institution of another state shall pay a tax of two or six per cent on the valuation of the property which is permitted by the laws of Illinois to go to it by the death of the owner, it is only exercising the same power and jurisdiction which enables it

to lawfully say that no portion or part of such property shall go to a corporation of another state, as in *U. S.* v. *Fox, supra.*

It is so well settled in *Magoun* v. *Illinois Trust & Savings Bank, supra,* and many of the other cases herein referred to, that an inheritance tax is not a tax on property but a tax upon the right to succeed to the property, that further argument or citation of authority will be unnecessary in order to keep that doctrine before the court in passing upon the other questions involved.

(D) IF THE AMENDATORY ACT OF 1901, AS CONSTRUED BY THE SUPREME COURT OF ILLINOIS, IS REPUGNANT TO THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, THEN THE JUDGMENT OF THE SUPREME COURT OF ILLINOIS SHOULD BE AFFIRMED.

Upon this proposition it is probably not even necessary to suggest that inasmuch as the right of plaintiff in error to the exemption claimed by it is dependent upon the validity of the Amendatory Act of 1901, then if this court should, for any reason, hold the act to be unconstitutional, the right of plaintiff in error to an exemption from the tax must fail with the act, and therefore, the judgment of the Supreme Court of Illinois, imposing the tax, should be affirmed in that case.

Conclusion.

After a careful examination of all the authorities found, it is submitted there are but two cases which may be referred to as being in conflict with the position here taken, and those are the

Mahone Estate, 133 Cal., 180, and
Johnson's Estate, 139 Cal., 532.

These decisions, however, are of no weight, if they ever were, by reason of the more recent ruling of this court in the case of *Campbell* v. *California, supra*, construing the same statute.

It is unnecessary to suggest the question involved in this record is of great importance to the State of Illinois. The court will take notice of the fact that the inheritance tax law of the state is now yielding to the state an enormous revenue no small portion of which is derived from taxes imposed on the right of non-resident institutions to take the property of citizens of our state by devise.

The full text of the opinion of the Supreme Court of Illinois in this case will be found on page 28 of the transcript of the record filed herein, and is reported in Volume 216, Illinois Supreme Court Reports, page 23.

For the foregoing reasons it is respectfully submitted the judgment of the Supreme Court of Illinois should be affirmed.

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Edwin M. Ashcraft,
Of Counsel.

Supreme Court of the United States.

No. 103.—October Term, 1906.

The Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, Plaintiff in Error, *vs.* The People of the State of Illinois. } In error to the Supreme Court of the State of Illinois.

[December 24, 1906.]

Mr. Justice McKenna delivered the opinion of the Court.

This writ of error is directed to a judgment of the Supreme Court of the State of Illinois sustaining a tax assessed against plaintiff in error under the inheritance tax law of that State, passed June 15, 1895, entitled "An act to tax gifts, legacies and inheritances in certain cases, and to provide for the collection of the same." (Laws of 1895, p. 301.)

The facts are as follows: Fanny Speed, a citizen and resident of Kentucky, died seized of certain real estate in the city of Chicago. She devised a one-half interest to plaintiff in error to be used as part of its educational fund, "to be held, invested and administered" as other properties forming a part of that fund. The will was probated in the Probate Court of Cook County, State of Illinois. An inheritance tax of $6,280.50 was assessed by the county judge against plaintiff in error, based on the value of the interest devised.

Plaintiff in error was incorporated by an act of the legislature of the State of Kentucky to form an educational fund for the promotion of literature, education, art, morality and religion. Its funds are held and used exclusively for such purposes and are required to be wholly expended within the State of Kentucky. It is not permitted to make dividends or distribution of profits or assets among its members or stockholders. It does not have or maintain an office in the State of Illinois or engage in educational or religious work therein.

From the action of the county judge imposing the tax, plaintiff in error appealed to the County Court of Cook County and assigned as grounds of appeal: (1) That by reason of its organization and the purposes of its organization, as shown by the record, it was exempt from such tax under the act of May 10, 1901, amending the act of June 15, 1895. (2) For that the imposition of such tax upon it (the plaintiff in error), when corporations organized for like purposes under the laws of the State were exempt therefrom, was in conflict with the constitution of the

State of Illinois, and rendered said act void as to plaintiff in error, as in conflict with the Fourteenth Amendment of the Constitution of the United States, in that it abridged the privileges and immunities of plaintiff in error, who was a citizen of the United States, and denied to it the equal protection of the laws. The County Court sustained the tax and the Supreme Court affirmed the judgment. This writ of error was then sued out.

The assignment of errors in this court, omitting the specification of error based on the constitution of the State, is the same as that in the State courts.

It is enough for our purpose to say that section one of the act of 1895, subjects to a tax all property situated within the State, which shall by will or by the intestate laws pass from any person who may die seized or possessed of the same. The act was amended in 1901 by adding thereto the following section:

"When the beneficial interest of any property or income therefrom shall pass to or for the use of any hospital religious, educational, bible, missionary, tract, scientific, benevolent or charitable purpose, or to any trustee, bishop, or minister of any church or religious denomination, held and used exclusively for the religious, educational or charitable uses and purposes of such church or religious denomination, institution or corporation, by grant, gift, bequest or otherwise, the same shall not be subject to any such duty or tax, but this provision shall not apply to any corporation which has the right to make dividends or distribute profits or assets among its members."

The Supreme Court decided that this amendment did not apply to "corporations created under the laws of a sister State." And also decided, as so construed, the amendment was not repugnant to the Constitution of the United States. The court said:

"A clear distinction exists between domestic corporations and corporations organized under the laws of other States. Such corporations fall naturally into their respective classes. Over the one—that which the State has created—the State has certain powers of control, and the other is beyond its jurisdiction. Those of its own creation have been endowed with corporate powers for the purpose of subserving the interests of the State and its people; those which have been given life by the laws of a sister State have entirely different ends and objects to accomplish. The lawmaking power would find many weighty considerations authorizing the classification of foreign and domestic corporations into different classes and justifying the creation of liability on the part of foreign corporations to pay a tax on the right to take property by descent, devise or bequest, under the laws of the State, and at the same time leaving the right of a domestic corporation so to take free of any such exaction."

It will be seen by a reference to the assignment of errors that the ground of the attack by the plaintiff in error on the validity of the tax assessed against it is that the imposition of the tax upon it, while other corpora-

tions organized for like purposes under the laws of Illinois are exempt, renders the act of May 10, 1901, void, as to plaintiff in error. And, in their argument, counsel say: "It is the effect given by the Supreme Court of Illinois to this amendment (the act of 1901) that violates the rights claimed by the plaintiff in error under the Constitution of the United States." The construction of the act by the Supreme Court we must accept as determining the meaning of the act. In other words, we must regard the act as if the legislature had, in explicit language, excluded from its provisions foreign corporations. If this renders the act void plaintiff in error, whether its argument be tenable or untenable, seems to be put in the dilemma urged by the defendant in error, and an affirmance of the judgment is required. If the act of May 10, 1901, is invalid it can not give exemption from taxation to either domestic or foreign corporations, and plaintiff in error was rightly taxed under the act of June 15, 1895. Plaintiff in error, of course, does not desire to take exemption from domestic corporations. It desires to remove the discriminatory effect of the amendment of May 10, 1901, by including in its bounty foreign corporations. Can this be done? May a court by construction put into a law that which the legislature has left out? There is a difference between burdens and benefits, and it may well be that a law which confers the latter upon some persons, and thereby increases burdens on others, may be declared invalid by the courts. But if the courts may strike down privileges may they extend favors and make objects of bounty those whom the legislature has excluded? The questions raise important considerations, but we may pass them, because the contention that the act of 1901 is invalid encounters an insuperable obstacle in the power of the State to classify objects of legislation and discriminate between classes. This power is not unconstitutionally exercised by legislation which exempts the religious and educational institutions of the State from an inheritance tax and subjects educational and religious institutions of other States to the tax. Regarding alone the purposes of the institutions, no difference may be perceived between them, but regarding the spheres of their exercise, and the benefits derived from their exercise, a difference is conspicuous. It is this benefit that may have constituted the inducement of the legislation.

Plaintiff in error contests the classification of the act of 1901 and the conclusions deduced from it in an able argument. We do not reply to the argument in detail, because we have defined so often the principles of classification that we must regard repetition as unnecessary. An observation or two, however, may be worth while. It is contended that the exemption of the amendment of 1901 "is not limited by the decision of the Supreme Court to corporate takers or users," and that the decision, by treating the act "as a grant of privileges and immunities to corporations," ignored "the test of use found in the inquiry 'To what purpose is the beneficial interest in

the property devoted?'" and the consideration that there was no necessity for corporate agency in that connection. The result of this is, it is urged, that the court made the "power of State visitation and control" over corporations "the test of taxability or non-taxability upon the right of succession." Denying this to be the test, and contending that the test should be the use to which the property is devoted and the question of tax or freedom from tax determined thereby, and asserting that plaintiff became a person within the jurisdiction of the State by going there to take title to property there situated, and by probating the will of Mrs. Speed as evidence of such title, it is deduced that it was not competent for the State to tax the property of plaintiff in error at one rate and the property of corporations, organized under her laws, at another rate.

It must be kept in mind that the controversies in this case depend upon the power of the State over inheritances and the conditions she may put upon them in the exercise of that power. And this is prominent in the decision of the Supreme Court. In considering this power, and classification in the exercise of this power, the court took into account the greater control and direction the State had over domestic than over foreign corporations. It did not put out of view the uses of property expressed in the act of 1901 nor ignore the consideration that there was no necessity for a corporate agency to execute those uses. The case presented especially a comparison of the rights of corporations, but the decision was broad enough to consider natural persons. "In laying such a tax," (an inheritance tax,) the court said, "the legislature may consider the relation which the person or corporation given the right of succession sustains to the deceased, to the property or to the State, and may regulate the amount of the tax to be required in view of such relation, and in exercising this power may lay a tax on the right of one class of persons or corporations to take, and may deem it wise to impose no tax upon the right of other classes of persons or corporations to take." A Federal court would hesitate indeed to put impediments on this power or declare invalid any classification of persons or corporations that had reasonable regard to the purposes of the State and its legislation. And it cannot be said that if a State exempts property bequeathed for charitable or educational purposes from taxation it is unreasonable or arbitrary to require the charity to be exercised or the education to be bestowed within her borders and for her people, whether exercised through persons or corporations.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.